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NSW Law Reform Commission

REPORT 61 (1988) - NAMES: REGISTRATION AND CERTIFICATION OF BIRTHS AND DEATHS

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Terms of Reference and Participants

NEW SOUTH WALES LAW REFORM COMMISSION
To the Honourable J R A Dowd LLB, MP,

Attorney General for New South Wales

NAMES

REGISTRATION AND CERTIFICATION OF BIRTHS AND DEATHS

Dear Attorney General,

We make this Report pursuant to the reference from the Honourable T W Sheahan BA LLB, MP, Attorney General for New South Wales, to this Commission dated 11 November 1985.

Helen Gamble

(Chairman)

Eva Learner

(Commissioner)

Ronald Sackville

(Commissioner)

Terms of Reference

REGISTRATION AND CERTIFICATION OF BIRTHS AND DEATHS

On 11 November 1985, the then Attorney General of New South Wales, the Honourable T W Sheahan, BA LLB, MP, referred the following matters to the Commission for inquiry and report:

1. Criteria for registration of the surname of a child of married and unmarried parents; registration procedures and acknowledgment of paternity in relation to an ex-nuptial child; details to be recorded in relation to births and deaths; provision of certificates omitting potentially embarrassing details appearing in a registration.

2. Any related matter.

Participants

Commissioners

For the purpose of the reference a Division was created by the Chairman in accordance with s12A of the Law Reform Commission Act 1967. The Division when first constituted on 3 April 1986 comprised the following members of the Commission:

Mr Keith Mason QC (Chairman)

Helen Gamble

Eva Learner

Russell Scott

The Division was reconstituted on 19 August 1987 to comprise:

Helen Gamble (Chairman)

Eva Learner

Ronald Sackville

Russell Scott (until 17 June 1988)

Research Director

Williarn J Tearle

Research and Other Assistance

Ms Adrienne Bailey

Ms Laura Beacroft

Mr James Hirshman

Ms Juliet Potts

Mr Mark Robinson

Librarian

Ms Beverley Caska

Word Processing

Ms Annette Boseley

Mrs Nozveen Khan

Ms Joanne Keene

Miss Lucinda Pollard

Miss Doris Sclosa

Secretarial Assistance

Miss Judith Grieves

Ms Glenda Owens

Administrative Assistance

Ms Zoya Howes

Ms Jennifer McMahon

Summary of Recommendations

In this Summary of Recommendations, and throughout the Report, the Registration of Births, Deaths and Marriages Act 1973 is referred to as the Registration Act.

1. An Open Register

The Register of Births, Deaths and Marriages should become an open register available to all members of the public, except for those parts which are closed by statutory authority. (paras 4.14-4.24)

2. Information Recorded

The Register should contain the minimum information necessary to fulfil the purposes for which it was created. (paras 4.25-4.33)

3. Certificates

Certificates issued by die Registry should contain only the information requested by the applicant. (paras 4.34-4.36)

4. Corrections and Deletions

The Register should contain an accurate record of all entries made on it. 7here should be no deletions or expungernent to conceal sensitive or embarrassing material. People affected by entries on the Register should have access to the Register to ensure that those entries are correct. (paras 4.37-4.44)

5. Birth Registrations

Both parents should be required to register the birth of their child. (paras 4.45-4.56)

6. Registration of Name

It should be compulsory for parents to register a name for their child at birth. (paras 4.57-4.58)

7. Choice of Names

The names of a child entered on the Register should be those chosen by the parents. 'The only exceptions to this freedom of choice should be made to ensure that names are not obscene, offensive or unreasonable in length. 7he parents should be free to register the names, including the sumame, by which they intend the child to be known. (paras 4.59-4.69)

8. Change of Name

(i) There should be no change to the existing law under which a change of name is a matter of choice for an individual, and for which registration is not necessary.

(ii) The evidence required to support an application to register a change of name should be stated in Regulations under the Registration Act.

(iii) The statutory prohibition on recording a change of surname following marriage should be removed.

(paras 4.70-4.78)

9. Registration of a Change of Name

Administrative responsibility for the registration of changes of name should be transferred from the Land Titles Office to the Registry of Births, Deaths and Marriages.(paras 4.79-4.80)

10. Registration of Stillbirths

(i) A permanent Register of Stillbirths should be created and maintained. The Register should not be open to the public, but certificates containing the information entered on the Register should be available to the parents.

(ii) The definition of stillbirth in the Registration Act should be amended to accord with the definition used for medical purposes.

(paras 4.81-4.92)

11. Registration of Adoptions

The Commission recommends no change to practice in relation to the registration of adoptions. Information on the original birth registration of a child who is subsequently adopted should be retained permanently, although not made available for public access. (paras 4.93-4.96)

12. Registration and Artificial Reproduction

Consistently with the registration of adoption, the Registry of Births, Deaths and Marriages should become the repository of all information relating to the parentage of children born through use of any of the artificial reproductive techniques. This information should be held permanently, initially on a closed register, until decisions are taken on the storage and release of the information. (paras 4.97-4.104)

13. Registration and Transsexuals

(i) Alteration of the Register should be permitted to reflect change of sex following sexual reassignment surgery.

(ii) Applications for such alterations to the Register should be supported by a statutory declaration citing appropriate medical evidence.

(iii) An application for a change of name to a name more appropriate to a member of the opposite sex should be accepted and the change registered, provided the application is supported by evidence necessary to prove change of name at common law.

(iv) No entry on the register should be expunged following an alteration to sex or name, but certificates issued by the Registry should contain only the information requested by the applicant.

(v) These parts of the Register should be kept open to the public.

(paras 4.105-4.114)

14. Registration of Death

Where possible the particulars necessary for the registration of a death should be obtained from a relative of the deceased person as relative is defined in the Registration Act. (paras 4.115-4.127)

1. History of Reference

I. PROBLEMS

1.1 This reference on registration of births and deaths calls for consideration of the purposes of registration and the role of the Registry as wen as Registry practice and the legislation itself. The reference grew out of specific difficulties within the Registry, occurring in many cases because registration law and practice were unresponsive to contemporary attitudes and legislative policy.

1.2 The Registration of Births, Deaths and Marriages Act 1973 (the Registration Act) sets out the powers and functions of the Registry, but in many ways the law and practice of registration have changed little since the Registration Act of 1855 which established civil registration in New South Wales. Without denying its importance and, while making increasing demands of its information, the Registry has been largely overlooked by successive governments. Its role is taken for granted. For example, only now in 1988 does the Registry have the extensive computer capacity for which Its operations are so well suited. There is little legislative guidance for the performance of the diverse and often vaguely defined functions expected of the Principal Registrar. His statutory powers are expressed in very wide terms. Some functions of the Registry have developed outside the legislative framework, relying on regulations and administrative processes to fulfil the demands of government. This has occurred without an independent review of the role of the Registry.

1.3 The administrative and social contexts in which the Registry operates have altered in recent years. Developments in administrative law, including the creation of the Office of Ombudsman, the Privacy Committee and the proposed freedom of information legislation[1], reflect community expectations about the role of government officers and concern about the security of Information held by governments. The Anti- Discrimination Act 1977, the Children (Equality of Status) Act 1976, and the De Facto Relationships Act 1984 all recognise individuals and their relationships. In a way quite different from the assumptions on which Registry law and practice were established. The practices followed may not always accommodate the cultural diversity which now exists within society, nor contemporary thinking on issues such as adoption and stillbirths.

1.4 The matters which gave rise to the reference and issues which have emerged in the course of the Commission's work, reflect areas in which the Registry is not always able to fulfil public expectations of the registration system. Dissatisfaction with the registration system was recorded in a number of representations and complaints received by the Registry itself, The Anti-Discrimination Board, The Attorney General's Department and the Law Reform Commission. A sample of the issues which caused concern is given below.

1.5 The most publicised issue relating to Registry practice emerged in a complaint made to the Anti-Discrimination Board which resulted in a hearing before the Equal Opportunity Tribunal. The decision in *L v Registrar of Births Deaths and Marriages* concerned the practice and procedures of the Registry in relation to registration of a child's surname.[2] The mother sought to register the child's birth with her maiden surname L, without the consent of her husband, the child's father, from whom she was separated. This was done, but subsequently the birth was re-registered to conform with usual Registry practice. The registration of the child's birth was based only on the information supplied later by the child's father, in the father's surname, S. The mother complained that the Principal Registrar discriminated against her because of her sex and marital status. The Tribunal decided, by a majority, that Ms L's complaints were substantiated on both counts. The Tribunal found that the Principal Registrar had acted unlawfully and, if faced with such a dilemma in the future, should register particulars according to the form received first by him, whether submitted by the father or the mother. Current Registry practice conforms to the practice suggested by the Tribunal. The decision was widely reported in the media and the new practice has attracted some criticism.[3]

1.6 Other representations and complaints about the law and practice of registration follow. Some of the issues are specified in the Commission's terms of reference. Others have emerged in the course of consultation on the reference.

Procedures for registration of the birth of an ex-nuptial child. Where a child's parents are not married, a different Form of information of Birth must be completed. The father of an ex-nuptial child generally may not register the birth nor acknowledge paternity on the register without the mother's consent.

Registration of a surname of a child. Different practices apply to children of married and unmarried parents. The surname chosen must conform to those acceptable in Registry practice. Registration without a surname is not usually permitted.

The details required to register a birth or death. Apparent discrimination exists against women in the registration of details about a birth. Criticisms that the particulars are too intrusive are offset by suggestions for recording even more details.

Embarrassment caused by the form and contents of birth and death certificates. Inclusion of details of the marriage of a child's parents on the birth certificate of the specific place and cause of death and blank sections on a certificate where marriage or paternity details are not registered have all drawn criticism.[4]

The evidentiary requirements which must be met to register a change of name.

The special rules concerning alteration of the register following sexual reassignment surgery, and the issue of certified copies of such registrations.

Registration of the birth of a stillborn child. The Registry issues neither a birth nor a death certificate, and does not maintain a permanent stillbirth register.

Access to registered information. Copies of registered information are available only to those people considered by the Principal Registrar to have sufficient reason to require them. Those who have been adopted may not have access to their original birth records. Extensive transfer of registered information to various government and other bodies occurs, either with statutory authority or by arrangement with the Principal Registrar.

II. THE REFERENCE

1.7 On 11 November 1985, the then Attorney General of New South Wales, the Hon T W Sheahan BA LLB, MP, referred the following matters to the Commission for inquiry and report:

> Criteria for registration of the surname of a child of married and unmarried parents, registration procedures and acknowledgment of paternity. In relation to an ex-nuptial child; details to be recorded in relation to births and deaths, provision of certificates omitting potentially embarrassing details appearing in a registration;
>
> any related matter.

1.8 The then Chairman of the Commission, Mr Keith Mason QC took charge of the reference and a Division was constituted in April 1986. Mr V M Bennett (Principal Registrar. Registry of Births Deaths and Marriages) and Mr A W Imrie (former Deputy Registrar) accepted appointments as Honorary Consultants to the Division. The Commission has drawn heavily on the advice and expertise of the Principal Registrar. Mr V M Bennett, and particularly wishes to record its appreciation for his assistance. In the course of this reference. Mr Mark Robinson, a Legal Officer of the Commission undertook background research on the law of names and the law and practice of the registration and certification of births and deaths. and prepared a draft discussion paper based on this information.

1.9 In recognition of the particular needs of this reference, an extensive program of consultation occurred prior to the issue of a Discussion Paper. Inquiries were made of government agencies, and private associations concerned with the family and children, women, ethnic and aboriginal communities, and genealogical research, and also religious bodies [see Appendix A]. Submissions were sought on the issues identified by the Commission, including particulars to be supplied at registration and appearing on certificates issued by the Registry, registration of a surname at birth, and ex-nuptial birth registration.

1.10 Extensive inquiries were made of government departments and agencies which receive details of information contained in the registers [see Appendix B]. The Commission asked what and how information is communicated, how it is used and stored, and the authority on which it is received.

1.11 The Principal Registrar of Births, Deaths and Marriages and Registry staff provided assistance and information about the internal operation and practices of the Registry. This information formed the basis for the Division's preparation of a Discussion Paper which was issued in early 1988. The Discussion Paper drew submissions from a wide range of people and community groups. The submissions and further contact with a range of authorities were used extensively in the preparation of this Report [see Appendix C].

III. APPROACH OF REPORT

1.12 The registration system has a fundamental concern with peoples' names and relationships. In Chapter 2 we consider the traditions of naming and discuss the common law related to the acquisition and change of names. We refer also to certain legislation which provides a context for the treatment at law of children and families which is relevant to some legal rights and responsibilities associated with the registration system.

1.13 Chapter 3 examines the system of registration of births and deaths. We examine the origin of compulsory civil registration and present Registry organisation. We analyse the statutory sources of the authority for the powers exercised by the Principal Registrar, and the extent of the discretionary powers which may be exercised.

1.14 Our recommendations appear in Chapter 4. For each aspect of the registration system considered, we present the current law and Registry practice, the issues about which concern has been expressed and our conclusions.

FOOTNOTES

1. At the time of writing the Freedom of Information Bill 1988 (NSW) was still under discussion.

2. (1985) EOC 92-142 *Equal Opportunity Law and Practice* (Aust & NZ) CCH.

3. Women Lawyers' Association. "Get me to the Registry on Time", (February 1986) 24(1) *Law Society Journal* at 51-52; "Overstepping Equality", editorial *Australian* 23 October 1985, which stated that the decision "gives rise to the ludicrous prospect of some parents engaging in a race to the registry office to get in the first bid on the name of their offspring".

4. Concerns about these problems led the Attorney General in 1984 (the late Honourable D P Landa) to propose that, in future, birth certificates should not carry details of a person's parents. See "Change to birth certificates" *Sydney Morning Herald*, 22 November 1984.

2. Law of Names

I. USE OF NAMES

A. Origin of Names

2.1 The art of naming and the desire for being named are of antiquity far greater than the law.[1] In the Anglo-Celtic tradition, a personal or Christian name given to a child by the parents was the only name a person bore. By the twelfth century in England, a by name (additional description) was in use to identify a person for official purposes.[2] Surnames as inherited family names were well established by the mid- fourteenth century. They were not used by everyone, nor were all hereditary.[3] The use of surnames appears to have been more a response to the needs of state and church administration (the exchequer, legal transactions, tenants' rolls) than for purposes of self-identification.[4]

2.2 The origin of the custom of paternal naming in Anglo-Celtic society is not clear, although the practice is typical of a patriarchal society. Whether for administrative convenience or the dictates of inheritance, hereditary paternal surnames were established as customary. They were not used exclusively as there is evidence of matronymics in English family names.[5] In Australia the tradition of patronymics has been maintained.

2.3 Naming systems In other cultures, including those of migrants to Australia, show a diversity of practices.[6] While It is true to say the majority follow the hereditary paternal surname custom as was transferred from the British Isles, there are some significant differences, especially in Asian and Slavic communities.[7] Other systems identified by the Commission do not use either parent's surname In the child's name.[8] Names in Aboriginal languages use traditional forms, including skin names, but even within Aboriginal society, practices are not uniform? As it has been impossible to obtain definitive statements of naming practices In ethnic communities represented In Australia, the Commission has not sought to formulate statutory provisions to regulate the naming of children in New South Wales.

B. Right to a Name

2.4 The naming of a child is so fundamental a concern that it has been recognised by the United Nations in the Declaration of the Rights of the Child which states:

> Principle 3 - The child shall be entitled from his birth to a name and nationality.

The International Covenant on Civil and Political Rights (ratified by Australia in 1966) is in similar terms:

> Article 24:2 - Every child shall be registered immediately after birth and shall have a name.

2.5 The latter provision was included as Article 14(b) of the proposed Australian Bill of Rights.[10] Whether these documents refer to forename or surname, or both, is not defined.[11] The common law of names in New South Wales would suggest that emphasis be placed on the forename, given or Christian name.[12]

II. COMMON LAW OF NAMES

2.6 There are very few established common law principles relating to the acquisition of names and legislation in Australia and England generally preserves the common law. This is in contrast to the complex legal and administrative rules in many European countries.[13]

2.7 The common law permits parents to choose freely a forename for their child, and expects them so to do. In the words of Lord Denman CJ, "We must presume that every person has a Christian name".[14] The given or forename of a person is not necessarily a Christian name in the strict sense of a baptismal name. A person may become known generally by a name assumed in addition to or in place of the baptismal name, and that name is valid for purposes of legal Identification. [15]

2.8 The use of a surname Is a convention rather than a legal necessity,[16] and the surname is never formally bestowed on a person but acquired by reputation. In the most recent Australian statement of the common law principle, the full court of the Family Court of Australia stated in *Chapman v Palmer:*

> At common law an adult may assume any surname by using such name and becoming known by It. A surname is not a matter of law but a matter of repute. [17]

2.9 This decision acknowledges the earlier House of Lords statement. In *Earl Cowley v Countess Cowley* which refers to the only restriction on the surname by which a person may be known:

> Speaking generally, the law of this country allows any person to assume and use any name, provided its use Is not calculated to deceive and to inflict pecuniary loss.[18]

2.10 It is the normal convention that a married woman acquires by usage and repute her husband's surname (and may retain it upon divorce), but the common law regards this practice as no more than a convention.[19]

2.11 The surname by which a child is known, although not forming part of the true legal name,[20] is apparently a matter of great emotional significance[21] and has been the basis of considerable litigation. In practice, the child will generally be known by the name given by the parents at birth and established by reputation and usage. It will depend both on the parents' acts and the assumptions of others. Generally it will be assumed the child carries the name of the parent/s with whom the child lives.[22] Conventionally the surname is the father's unless he is not known or does not acknowledge paternity.

2.12 The suggestion that this convention is a rule of law, made by Vautier J in *H v J.*[23] was rejected strongly by McLelland J in the NSW Supreme Court in *C v S:*

> There is, in my view, no rule of law that a child should have or must be given the same surname as his father. If the statement by Vautier J in *HvJ* that, by the common law of England "the surname of the child has, for centuries past, been recognised as being that of the father ... when the father and the mother were married ..." is intended to propound such a rule, then 1 respectfully disagree with it. The better view, in my opinion, is that the surname of a child is that by which he is known, and that there is a rebuttable presumption (whether of fact or law it is unnecessary for present purposes to determine) that a child is known by the surname of his father, at least where his father and mother are married, and the mother has herself taken the surname of the father.[24]

III. CHANGE OF NAME

2.13 The common law recognises an adult's right to change his or her name. Provided there is no intent to defraud or deceive and inflict pecuniary loss on another, a person may assume any new or additional name including one which is used by another.[25] It is generally accepted that both forenames and surnames can be changed at will.[26] For adults in New South Wales there are now no statutory restrictions on the ability to change names,[27] the limitation on changes by aliens having been removed with the repeal in 1984 of the Aliens Act 1947 (Cth).[28]

2.14 Different restrictions apply in changing a child's name, frequently an issue in litigation over guardianship. The Family Court in *Chapman v Palmer* noted that in England "an infant is not competent to change his or her name without parental consent",[29] and went on to explain that under Australian law:

> (The child's custodians) have the same capacity to change the child's surname as to change their own. A child need not be given and need not retain the name of his parent or custodian, but whatever name is chosen by his custodians must be established by reputation and usage.
>
> A minor may have the ability within limits, to bring about a situation in which he is known by a surname of his own choosing.

> This is more likely to be possible where the minor is approaching majority and where he lives apart from his custodian or where the custodian agrees or does not object to the chosen name, the younger child has little scope for independent action.[30]

2.15 The principles on which a court will decide whether there should be any change in the surname of a child have been identified.[31] The principle that the welfare of the child is the paramount consideration will prevail over the wishes or proprietary interests of the parents. The wishes of the child must be taken into account, as in all matters relating to welfare, custody, and guardianship.[32] A court will not intervene if the parent with custody of the child has the consent of the other parent and it is in the child's interest to change the surname. A declaration of the Family Court is sufficient to permit a parent to change the name. The formal record of the change made under s34 of the Registration Act provides evidence that the change has occurred.[33]

2.16 Whilst the acquisition of a new name by use and reputation is the only way in which a person's name may be changed and formal evidence of such change is unnecessary, there are various ways in which evidence of the change may be substantiated. The most public method is to lodge a deed poll with the Deeds Lodgment Section in the Land Titles Office. This puts the intention to change a name on the public record, but unless the intention is acted upon by the person, no change occurs. The Registration Act[34] allows the Principal Registrar to note on the birth register an additional name or lawful change to a name (other than a change consequent upon or effected after marriage). Notation of the change on the register of births serves only as evidence of the change, and does not operate to make the change.

2.17 An adoption order changes the child's name.[35] Unless previously generally known by a particular surname, the child is given the adoptive parents' surname, together with the forenames chosen by them. The surname of a child over 12 will be changed only with the child's consent, or for special reasons in the child's interests. The adopted child's name is established by use and reputation, and as with any person's name, it may be changed by use and reputation.

IV. OTHER RELEVANT LEGISLATION

A. Children (Equality of Status) Act 1976

2.18 The Children (Equality of Status) Act was intended to remove the legal disabilities of ex-nuptial children, to facilitate the establishment of paternity and maternity of children, and to assist them to the greatest extent legislatively possible to establish the existence of the parent- child relationships on which their rights depend.[36] Similar legislation has been introduced in most Australian jurisdictions. Such legislation reflects contemporary attitudes and recognises the fact that a sizeable class of people has been discriminated against on unjustifiable grounds.

2.19 Section 6, the key section of the Act, provides that:

> whenever the relationship of a child with his father and mother, or with either of them, falls to be determined by or under the law of New South Wales, ... that relationship shall be determined irrespective of whether the father and mother of the child are or have ever been married to each other ....

The effect of this Act is to abolish the doctrine that a child born out of wedlock is filius *nullius,* replacing it with the doctrine that in law the child is the child of its natural parents.[37]

2.20 The Act also contains procedures by which a man may formally acknowledge paternity of an ex-nuptial child, and have his name recorded on the register of births. Where a formal acknowledgment of paternity made by the father of an ex-nuptial child is either countersigned by the mother of the child, or recorded in a register of births (which usually occurs only with the mother's consent) or in the register of parentage information kept under the Registration Act, a rebuttable presumption of paternity arises".[38] Similarly, a presumption of paternity will arise on the making of orders under Part 11 of the Maintenance Act 1964,[39] or under Part XII of the Child Welfare Act 1939,[40] under comparable legislation outside New South Wales,[41] and following the making of custody orders[42] which name a man as father of an ex-nuptial child. Section 13 provides for the Supreme Court to make a judicial declaration of paternity on the application of the mother, father, Principal Registrar or other

interested persons. Sections 13 and 14 of the Children (Equality of Status) Act contain similar provisions for recognition of maternity. In each case copies of the orders are transmitted to the Principal Registrar. The Registration Act contains extensive procedures for the recording of such declarations in a register of parentage information or on the register of births.[43]

B. Anti-Discrimination Act 1977

2.21 The Anti-Discrimination Act 1977 makes it unlawful to discriminate on the grounds of race, sex, marital status, physical or intellectual impairment, or homosexuality. Discrimination is prohibited in areas such as employment, accommodation and the provision of goods and services.

2.22 The Act established the Anti-Discrimination Board and the Equal Opportunity Tribunal. The Board's functions include community education, research and policy advice, and hearing exemption applications. The Board investigates and conciliates complaints of discrimination; in the event that the Board is unsuccessful, the matter goes to a hearing before the Tribunal. The legislation implements the principle that all people have a right to expect equal treatment. However, it is not an easy matter to eliminate some forms of discrimination; in some cases greater inequalities may be perpetuated, or the public interest may not be served.

2.23 In a report identifying discrimination in New South Wales legislation, the Board considered that s14 of the Registration Act constituted discrimination on the ground of marital status.[44] The reason given for the Board's view was that whereas s14 gives the father of an ex-nuptial child the right to choose to furnish particulars for inclusion on the child's birth, it is mandatory for his particulars to be included if the child is born within marriage. However, the Board was unable to suggest an alternative procedure which would remove the discrimination and made no recommendations for change.

2.24 Discrimination can occur in other situations under the Registration Act as well. The decision which prompted the making of this reference is a case in point. In *L v Registrar of Births, Deaths and Marriage* [45] the Equal Opportunity Tribunal found Registry practice discriminated against Ms L on the grounds of sex and marital status. The facts of the case are set out in paragraph 1.5 above. They concerned a situation in which a married couple were competing to register different surnames for their child. The Principal Registrar preferred the husband's surname, but was advised by the Tribunal that he should have accepted the name first offered. Registry practice now conforms with the Tribunal's decision. In the event of a dispute, the Form of Information first lodged will be registered.

2.25 For the first time, this legislation gives the Family Court jurisdiction over all matters concerning the guardianship, custody or welfare of a child, whether the child was born within a marriage or is ex-nuptial.[46] It also extends to ex-nuptial children the principle that, unless the Court orders otherwise, each of the parents is a guardian of the child.[47] A guardian is a person with responsibility for the long-term welfare of the child, while custody confers day- to-day care and control.[48]

2.26 It has long been accepted that a court can make orders with respect to the surname and even the forename of a child.[49] Proceedings about a child's name are proceedings with respect to guardianship.[50] The usual situation in which the court will be asked to make orders as to the name (most frequently it is the surname) occurs when the parent with custody seeks to change the child's name.

2.27 A court has no power to alter a child's name, that can only occur as a consequence of usage and reputation.[51] The most it can do is make an order prohibiting the use of one name and requiring a parent to take action to ensure that the child is generally known by another name.[52] When making an order with regard to a child's name, the court is required by the Family Law Act to regard the welfare of the child as the paramount consideration.[53] The Family court has explained the principles it will apply to determine what is in the best interests of the child in *Chapman v Palmer*[54] and *Beach v Stemmler.*[55]

2.28 The Family Law Act also contains presumptions as to parentage. Section 60B establishes certain presumptions of parentage in the case of children born as a result of artificial conception procedures. These presumptions appear be conclusive. Rebuttable presumptions[56] of paternity and maternity appropriate arise:

when a child is born to a woman during or within 10 months of the termination of a marriage:[57]

from the cohabitation of a man with the child's mother for a specified period;[58]

with the entry of a person's name on a register of births or parentage information;[59]

from a judicial finding either expressly or by inference naming a person as a parent; and[60]

by the execution of an instrument acknowledging paternity.[61]

FOOTNOTES

1. A Linell. *The Law of Names* (Butterworth, London, 1938) at 1.

2. P H Reaney and R M Wilson, *Dictionary of British Surnames* (Routledge and Kegan Paul, London, 1976) at xii.

3. *Id* at xlv.

4. See *Id* at xli and B Cottle, *The Penguin Dictionary of Surnames* (Penguin. Harmondsworth. 2nd ed. 1978) at 12-14.

5. Including Thomas Littleton, Judge and author of *Littleton's Tenures;* see *Re s22 of the Registration of Births, Deaths and Marriages Acts 1962 to 1967* [1973] Qd R 441 at 444.

6. See *Naming Systems of Ethnic Groups* (Dept of Social Security 1987).

7. *Ibid.*

8. Kenya - Australia Society, letter to the Commission, July 14 1986.

9. Ms P Ditton, letter in *Aboriginal Law Bulletin* No 6 December 1982 at 9.

10. Australian Bill of Rights Bill 1985 (Cth).

11. It is argued that. "it may be assumed that it refers to both the proper name (given name) and the surname (family name), but with emphasis on the latter". Vieno Voitto Saario. Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Study of Discrimination Against Persons Born Out of Wedlock* (UN, New York 1967) at 83.

12. See below paras 2.6-2. 12.

13. See for example the French Law of 11 Germinal Year XI, (1 April 1803) Art 1-3.

14. *Gatty v Field:* Levy v Webb (1846) 9 QB 431 at 442.

15. *R v Billingshurst Inhabitants* (1814) 3 M&S 25; 105 ER 603.

16. *Wakefield v Wakefield* [18071 Hagg Con 394 at 402; 161 ER 593 at 596.

17. (1978) FLC 90-510, 77.667; see also *R v Smith* (1866) 4 F & F 1099; 176 ER 923; *In re T (Orse H)* [1963] Ch 238 at 240; *Earl Cowley v Countess Cowley* [1901] AC 450 at 460.

18. 1190 11 AC 450 per Lord Lindley at 460; see *also Du Bourlay v Du Bourlay* [1869] LR 2 PC 430.

19. *D v B (Orse D)* [1979] 1 All ER 92.

20. *Re T (Orse H) (an infant)* [1962] 3 All ER 970.

21. *D v B (Orse)* [1979] 1 All ER 92.

22. *Chapman v Plamer* note 17 at 77, 671.

23. [1978] 2 NZLR 623 at 630.

24. [1979] 2 NSWLR 598 at 603.

25. *Du Bourlay v Du Bourlay* note 18; *Earl Cowley v Countess Cowley* note 17.

26. Despite heavily criticised and widely disregarded dicta of Vaisey J in *In re Parrott, Cox v Parrott* [1946] Ch 183 at 186 to the effect that a Christian (ie baptismal) name may not be changed except by Act of Parliament, at confirmation, or on adoption and never by-deed poll.

27. Cf Change of Names Regulation Act 1923 (WA) and amendments to the Births Deaths and Marriages Registration Act 1966 (SA) by the Statutes Amendment (Change of Name) Act 1980 (SA).

28. Aliens Act Repeal Act 1984 (Cth) s3.

29. *Re T (Orse H)* note 20.

30. *Chapman v Palmer* note 17 at 77, 671.

31. *Chapman v Palmer* note 17 at 77, 675-676 and *Beach v Stemmler* (1979) FLC 90-692, 78, 691.

32. Family Law Act 1975 s64(1) (b) and *Pylarnos v Reklitis* (1979) FLC 90-609, 78,125.

33. *Arthur v Comben* (1977) FLC 90-245, 76.319 at 76,322 per Demack SJ.

34. s34.

35. Adoption of Children Act 1965 s38.

36. See the Honourable F J Walker, "The Children (Equality of Status) Act (1976)", 15 (1) *Law Society Journal,* (February 1977) 45.

37. Per Hutley JA in *Gorey v Griffin* [1978] 1 NSWLR 739 at 744.

38. Children (Equality of Status) Act 1976 s 11 (1)(a).

39. s12(1)(a).

40. s12(2)(a).

41. s12(5)(a).

42. s12(6)(a).

43. ss42A and 42B.

44. Anti-Discrimination Board *Discrimination in Legislation* Vol 1 1978 at

45. (1985) EOC 92-142.

46. Commonwealth Powers (Family Law - Children) Act 1986 which commenced operation in October 1987.

47. Family Law Act 1975, s63F(1).

48. *Id* s63E(I).

49. See *Putrino v Jackson* (1978) 33 FLR 94.

50. *Chapman v Palmer* (1978) FLC 90-510, as affected by the change to definitions of custody and guardianship in s60A.

51. McLelland J in *C v S* [1979] 2 NSWLR 598 at 601, following *Chapman v Palmer* note 17 at 77.671.

52. See, for example, *Putrino v Jackson* (1978) 33 FLR 94; *Kelley v Kelley* (198 1) FLC 90-002, 76,071.

53. s60D.

54. (1978) FLC 90-510 77,667.

55. (1979) FLC 90-692, 78.694.

56. On the balance of probabilities, s66U(I).

57. s66P.

58. s66Q.

59. s66R.

60. s66S.

61. s66T.

3. Registration and Certification of Births, Deaths and Marriages

I. BACKGROUND

A. In England

3.1 Henry VIII is attributed with establishing the first registers of personal details. In 1539, his Vicar-General, Thomas Cromwell. Issued orders to the parish clergy that they were to record "every weddying christenying and burying".[1] His purpose was to record the demography of his people, although the contemporary fear was that the records would be used to impose a new form of taxation.[2]

3.2 The practice of recording baptisms and burials continued to be haphazard and unsatisfactory until 1837 when a system of compulsory civil registration was imposed.[3] For the first time births and not baptisms were recorded. The Report of a House of Commons Select Committee which inquired into the law affecting registration indicates the purposes for which universal civil registration were to be used.[4] Both national and individual interests were recognised. Accurate information about population numbers, health and mortality, and other matters important for government were to be supplied. Individuals were to be provided with legal proof of identity, descent and relationships especially for rights and claims to property. These are still the major purposes of registration.

B. In New South Wales

3.3 The registration system in England, adapted to colonial requirements, provided the model for civil registration in New South Wales. The first records of personal details were those of baptisms, burials and marriages, kept by ministers and chaplains of the Church of England. They date from the First Fleet in 1788.

3.4 In 1810 Governor Macquarie ordered exact registers to be kept by Church of England chaplains of all births and deaths in their parishes.[5] These records were to be compiled for the Governor for the purpose of transmitting to England "the Exact State of the Population of the Colony". Reporting the state of the colony to the Colonial Office in England was an annual task for administrations until self-government in 1855. Vital statistics were one measure of the colony's progress and the best available source of these was from church records.

3.5 As the colony grew, several Acts were passed to regulate the keeping of church records and to make them available to the administration and the public. At first only Church of England ministers were required to keep records of births, baptisms, marriages and burials.[6] Later, ministers of other denominations were also required to record details of baptisms, burials and marriages at which they officiated.[7] Copies of Church of England records were sent to the Church Registrar. Those of other denominations were supplied to the Registrar of the Supreme Court until 1856, except for the period between 1843 and 1849 when the office of Registrar General existed.

II. CIVIL REGISTRATION IN NEW SOUTH WALES

3.6 Compulsory civil registration of births, deaths and marriages commenced in New South Wales on 1 March 1856. The basic principles contained in the Marriages Act 1855[8] and the Registration of Births, Deaths and Marriages Act 1855,[9] and the practice of registration established to implement them, have endured until the present with only minor, mostly administrative, changes. The Office of Registrar General was also re-established and the colony divided into registration districts in 1856.

3.7 The purposes of registration then, as now, were both public and private: providing statistical data to government and the public, and authentic legal records for proving descent and identity. It is difficult to determine which purpose was dominant. In his Second Annual Report, the Registrar General responsible for establishing the system commented on:

> ... the growing appreciation of the advantages, social, political, legal, statistical, and sanitary, which have been found to attend the collection of vital statistics in every civilised country.

As a necessary branch of vital statistics, the importance of a Civil Registry of Births, Deaths, and Marriages, is every day becoming more apparent, indeed, the pursuit of statistical inquiries into every subject affecting human interests, whether individually or in a state of society, seems almost to have become a necessity of the age in which we live: - errors as to facts are thus daily exploded, and more just data are supplied for the judgment of the legislator, and for the right comprehension of the principles which should guide the proceedings of governments and societies, to the promotion of the physical and moral improvement of the people; and, besides this, the importance of having legal records easily accessible, to give security to the principles of inheritance, and to the legal succession to property, is very generally felt and acknowledged.[10]

3.8 An immediate result of civil registration was the annual compilation of a comprehensive statistical analysis of data registered about births, deaths and marriages, in table form with commentary.[11] This continued to be a function of the Registrar General until a Government Statistician was appointed and a Bureau of Statistics created in 1887.

3.9 The Registration of Births, Deaths and Marriages Act 1899,[12] which repealed the Registration Act 1855, was only a consolidating Act and made no changes to the law and practice of registration. It remained in force until the commencement of the Registration of Births, Deaths and Marriages Act 1973. The Registration Act 1973 was intended to up-date registration law and practice in the following ways[13]:

> to modernise the language and procedure of the original 1855 Registration Act which remained in force as the 1899 Act:
>
> to enable the implementation of a new system of registration, with regional birth and death registration and central marriage registration:
>
> to improve the Registry's efficiency by providing for the use of modem technology in processing equipment and techniques;
>
> to revise the statute law to take account of Commonwealth entry into the law of marriage and legitimation; and
>
> to make a number of changes of minor significance in the substantive law.

Since 1974, the Registration Act has been amended in only minor ways.

III REGISTRY OF BIRTHS, DEATHS AND MARRIAGES

A. Structure

3.10 Until 1975 the Registry was part of the Registrar General's Department. It is now administered within the Attorney General's Department, having been briefly a part of the Department of Services. The office of Principal Registrar of Births, Deaths and Marriages was created in 1975 and was held by the respective departmental heads. In 1984 the current Principal Registrar was appointed, the first to have a separate position and be located within the Registry.

3.11 The Central Registry is located in Sydney, and consists of four divisions, namely:

> Registration Division which compiles the registers and indexes, and makes amendments and corrections to the registers where appropriate. This Division is responsible for external, (ie, local and regional) registries.
>
> Certificates Division which maintains all the registers and indexes, and produces the certified copies of registered particulars when requested or authorised. The Family History Advisory Service assists users of the genealogical resources of the Registry.
>
> Administrative Services Division which is responsible for the data entry of all registrations in the computerised registers, and for general administration of the Registry.

Client Services Division which attends to all postal, telephone, and personal enquiries and requests for Registry services, and is responsible for performing civil marriages.

3.12 Until 1974 the State was divided into several districts, each with a registrar who maintained the district registers, with duplicates centralised in the Sydney office. Administration was altered by the Registration Act 1973 which abolished the districts and created local registrars at several country centres and regional registries at Newcastle and Wollongong.

3.13 Local registrars (who are usually the local clerks of the court) act as receiving agents for information lodged for registration, and maintain duplicate registers for local production of certified copies of registered particulars. They are authorised marriage celebrants. Regional offices process birth and death registrations from different parts of the State. All other registrations are effected, and central registers and indexes maintained, at the Sydney registry, which now employs computer technology for these purposes.

B. Functions of Principal Registrar

3.14 As head of the Registry, the Principal Registrar is responsible for a variety of functions. They are:

Establishment and maintenance of the registers and indexes, including effecting amendments where necessary.

Registration of all births, deaths, marriages, legitimations, stillbirths, memoranda of adoptions, and parentage information lodged with the Registry.

Issue of certified copies and extracts of registered particulars to applicants entitled to receive them, on payment of the prescribed fee.

Supply of information to government departments and agencies.

Civil administration of marriages, including solemnisation and related services.

Preservation of all original records relating to births, deaths and marriages in New South Wales.

C. Statutory Powers

3.15 The Principal Registrar's powers are to be found in many sources. In this section we describe the specific statutory sources of authority, then in Section D, the discretionary powers exercised by the Principal Registrar. The Registration of Births, Deaths and Marriages Act 1973 is the principal source of authority for the performance of the Registry's functions. It provides for the appointment of the Principal Registrar[14], a Deputy Principal Registrar[15], and local registrars.[16] It is the sole authority and contains detailed provisions for the registration of births,[17] stillbirths.[18] and deaths.[19] The Act specifies the circumstances and manner in which recordings may be altered or corrected,[20] or a registration cancelled.[21] It gives the Principal Registrar power to issue, or refuse to issue, copies of recordings on the registers.[22] He is empowered to provide information about births, stillbirths and perinatal deaths to the Health Commission and the Deputy Commonwealth Statistician.[23]

3.16 Uniform provisions for the legitimation of children are contained in the Marriage Act 1961 (Cth) ss89-92 and the Marriage Regulations Part V 52-71. Legitimations effected under this Act are recorded by the Principal Registrar.[24]

3.17 The Children (Equality of Status) Act 1976 requires the Principal Registrar to receive paternity acknowledgments, orders made under Part II of the Maintenance Act 1964 and declarations of paternity and maternity by the Supreme Court, and deal with them under the Registration Act.[25] This provides for information to be recorded on registers of births or parentage information.[26]

3.18 The Adoption of Children Act 1965 provides for a memorandum of adoption or discharge of an adoption order to be sent to the Principal Registrar,[27] who then registers the orders in the adoption register kept under the Registration Act.[28]

3.19 The Artificial Conception Act 1984 establishes an irrebuttable presumption of law that, if he consented to the procedure, the husband or de facto partner of a woman is presumed for all purposes to be the father of a child born as a result of the use of artificial insemination or in vitro fertilization.[29] To this extent the powers of the Principal Registrar to register particulars of parents for the birth of such a child are constrained.

3.20 The duty to register marriages derives from the Registration Act,[30] but the Principal Registrar and Registry officers also have powers and duties under the Commonwealth Marriage Act 1961 and Regulations. Administration relating to the solemnisation and registration of marriages is performed by the Registry on the Commonwealth's behalf. The Principal Registrar is the sole Registrar of Marriages, Registrar of Ministers of Religion pursuant to s27(1), and Registrar of Marriage Celebrants. Every local registrar is a Prescribed Authority under the Marriage Act, and they and staff members in Registry offices are authorised marriage celebrants pursuant to s39(2) of the Marriage Act.

3.21 The Life Insurance Act 1945 (Cth) makes provision for the Registrar of Deaths (in New South Wales the Principal Registrar) in specified circumstances to furnish a certified copy of a death certificate for a child under ten years of age, endorsed as specified, for the purposes of claiming payment from a life insurance company.[31] Similar provisions in the Friendly Societies Act 1912[32] were repealed in 1976.[33]

3.22 Numerous statutes require or authorise the Principal Registrar to furnish or make available registered particulars or information lodged with the Registry.

> Supply of information to the Australian Bureau of Statistics is authorised by s14(1) of the Statistics (Arrangements with States) Act 1956 (Cth) which gives the Bureau access to statistics in all government departments and instrumentalities, and also s54 of the Registration Act.
>
> Details of deaths and marriages relevant to the compilation of state and federal electoral rolls are provided to the Australian Electoral Office. Section 41(1) of the Parliamentary Electorates and Elections Act 1912 authorises the transmission of specified information about deaths, and s31 requires all government officers with relevant information to furnish it to the Electoral Commissioner. The Commonwealth Electoral Act 1918 s 108, and other arrangements for the joint preparation of rolls, regulate the provision of this information to the Australian Electoral Office.
>
> The Commonwealth Department of Social Security is empowered by s135TF of the Social Security Act 1947 (Cth) to require anyone with information affecting the granting of benefits to furnish it to the Department. No statutory authority is required to request or receive information given voluntarily.
>
> The Department of Veterans' Affairs (Commonwealth) is similarly empowered by s128 of the Veterans' Entitlement Act 1986 (Cth).
>
> The Department of Health (New South Wales) receives information in addition to that authorised by s54 of the Registration Act relating to births, stillbirths and perinatal deaths. The Public Health Act s21 permits access to registered information about all deaths, and s30 requires notification of deaths caused by infectious diseases.
>
> Supply of information from death registrations to professional registration boards was formerly authorised by various statutes,[34] but all relevant provisions have been repealed.[35]

3.23 In addition to these functions, the Principal Registrar exercises a discretion to provide regularly to other agencies information extracted from the registers. Pursuant to an agreement between the Principal Registrar and the Public Transport Commission in 1979,[36] the Department of Motor Transport receives certain information from death registrations. Certain consuls receive some details about the deaths of people born in their countries.[37] It is long established practice of the Registry to supply this information, although it has no evidence of the

international reciprocal arrangement on which it relies for authority and there appears to be no such agreement, nor any obligation on Australia to supply such information.[38]

D. Discretionary Powers

3.24 Performance of the Principal Registrar's duties involves the exercise of considerable discretion. The Registration Act confers very widely drawn powers on the holder of the office. The powers are not read down in regulations, nor are there specific guidelines within the Registry for their exercise. In addition the Principal Registrar is able to make administrative decisions in many areas of the Registry's operation which directly affect the public both in the registration process and in their access to registered information.

3.25 The Registration Act requires the Principal Registrar to establish and keep registers and indexes "in such manner and form as he thinks fit".[39] In similar terms, he may require further particulars for registration of births[40] and deaths[41] beyond those stipulated in the Act. Stillbirth registration is effected .as he thinks fit", and may be cancelled or destroyed by the Principal Registrar after two years.[42] To effect registration of a birth, death or marriage, he "may make such inquiries as he thinks fit- to ascertain particulars, and require any person he believes conversant with the facts to furnish relevant particulars.[43] He may alter, correct, supplement or cancel a registration, acting 'upon such evidence as appears to him to be sufficient and if he is satisfied that in the circumstances it is proper to do so". Any amendment to a registration is to be made "in such manner as-he thinks fit".[44] Certified copies, or such extracts as the Principal Registrar thinks necessary, are issued on request unless in the opinion of the Principal Registrar the reason stated by an applicant is not sufficient.[45]

3.26 Apart from the restriction on providing access to original birth registrations where a person has been adopted, there is only one restriction imposed by the Registration Act on the Registry. Employees are limited to making available to members of the police force particulars of a birth or stillbirth in prescribed circumstances only.[46] This prohibits a practice formerly followed in the Registry of routinely providing particulars to police when a child was born to a woman younger than sixteen years and eight months.[47]

E. Computerisation of the Registry

3.27 In 1985 the Attorney General's Department decided to fully computerise the records and operation of the Registry of Births, Deaths and Marriages.[48] They are in the process of installing an integrated information storage and retrieval system using optical and magnetic disk technology and a conventional computerised index. Currently registrations after 1952 are being scanned, transferred to optical disks and stored. Records from before 1952, which are handwritten, require a different technology, and scanning of these will commence in the 1988/89 financial year. When the system is fully operational new registrations will be stored as an image and Registry officers will be able to identify, locate, and print out any document required on demand. Additions and alterations will be easily made, and extracts taken as required.

3.28 Among the benefits of computerisation to the Registry and its users are:

- production of certificates and certified copies on demand,
- faster and easier historical and genealogical research.,
- greater accuracy;
- greater flexibility in certification such as production of abridged forms of certificates, and with legal alterations to contents;
- operational flexibility arising from rapid entry and retrieval, and cross referencing;
- compact and secure storage of records: and
- a networking capability with other Registry offices.[49]

FOOTNOTES

1. R B Merriman, *Life and Letters of Thomas Cromwell* Vol II (Oxford Press, 1902) at 154.

2. R E Chester Waiters, *Parish Registers in England* (Longmans, Green & Co, London, 1887) at 5. See also N J Vine Hall, (ed) *English Parish Register Transcripts* (Society of Australian Genealogists, Sydney, 4th ed, 1985) at 6.

3. Births and Deaths Registration Act 1836 (6&7 Will 4 C86).

4. *Report from the Select Committee on Parochial Registration,* 15 August 1833 Paper No 669 in *Reports of Select Committees* 1801-1852 Volume 14, (House of Commons, 1853) at 505.

5. Colonial Secretary: in letters, No 124 General Order 15 September 1810 [AO NSW Ref 4/1725] (State Archives).

6. Act 6 Geo IV No 21.

7. Act 5 Will IV No 2, Act 3 Vic No 7, Act 4 Vic No 14.

8. 19 Vic No 30.

9. 19 Vic No 34.

10. *Registration. (Report from the Registrar General), Second Annual Report,* (Sydney, 1858) at 1.

11. *Annual Report of the Registrar General* 1857 to 1867, renamed *Vital Statistics,* 1868.

12. Act No 17 1899.

13. The Hon J C Madison, Minister for Justice, *New South Wales Parliamentary Debates (Hansard)* 18 September 1973 at 959-960.

14. s4A.

15. s4E.

16.s5.

17. ss11-15.

18. ss16-21.

19. ss22-28.

20. ss32-36.

21.s40.

22. ss43-48.

23.s54.

24. Registration Act s41.

25. Children (Equality of Status) Act 1976 ss 11- 15.

26. ss42A, 42B.

27.s61.

28. ss30, 31.

29. Artificial Conception Act 1984 ss5, 6.

30.s29.

31. ss108-111.

32. ss56, 57.

33. Friendly Societies (Amendment) Act 1976, Schedule 5(5).

34. Chiropodists Registration Act 1962 s25(2), Dentists Act 1934 s7(2), Medical Practitioners Act 1938 s22(2). Nurses Registration Act 1953 s18(2). Pharmacy Act 1897 s7(b). Physiotherapists Registration Act 1945 s23(2). Veterinary Surgeons Act 1923 s18(2).

35. Chiropodists Registration (Amendment) Act 1973 Schedule 2, Dentists (Amendment) Act 1964 s2(c)(ii), Medical Practitioners (Amendment) Act 1981 new s22, Nurses Registration (Amendment) Act 1964 s2(1)(e), Pharmacy Act 1964, Physiotherapists Registration (Amendment) Act 1972 s2(h)(ii), Veterinary Surgeons Act 1986.

36. *Final Report, Management Audit, Registry of Births, Deaths and Marriages* November 1983 at 5.

37. Principal Registrar, letter to the Commission 29 April 1986.

38. Department of Foreign Affairs, advice to the Commission May 1988.

39.s9(l).

40.s11(3).

41.s22(3).

42. ss 16, 2 1.

43. ss37,38.

44. See Division 6 ss32-36 (Correction and alteration of registers) and s40 (Cancellation of registration).

45. See ss43, 44, 45.

46. Registration Act s54(3). Registration of Births, Deaths and Marriages Regulations 1973, regulation 7 refers only to cases where the Registration Act appears not to have been complied with or a false or misleading statutory declaration has been made.

47. That is, under the age of consent when the child was conceived; see the Hon J C Maddison, Minister of Justice, *New South Wales Parliamentary Debates, (Hansard)* 5 December 1973 at 17 1.

48. See Registry of Births, Deaths and Marriages Project, NSW Attorney General's Department, Sydney, March 1988.

49. Ibid.

4. Recommendations

I. INTRODUCTION

4.1 In the previous chapters, the history, law and practice of the Registry were examined to determine the purposes for which and the principles on which it operates. Few explicit statements of principle were found. It seems that generally the purposes of the Registry are assumed and the principles left unstated. An exercise of discretionary power by the Principal Registrar is relied upon to fill any gaps. This method has been used with reasonable success for many years, but it is now time for more legislative guidance to be given to the Registry on these fundamental matters. Assistance in formulating the appropriate principles can be derived from the related fields of privacy and freedom of information. In the following recommendations the Commission has attempted to apply those principles to the Registry's practices. The continuing importance of the common law in the field is also recognised.

II. PRINCIPLES UNDERLYING RECOMMENDATIONS

4.2 As described in Chapter 3, originally the registration system was introduced to further efficient administration of government. The system arose from a need to know population numbers and distribution, and to calculate population trends. In time, individuals came to rely on the information on the register relevant to them at certain significant times (at birth, death and marriage) to establish identity, family relationships and legal rights. Civil registration was intended to provide universal and accurate accounts of this information for government and accurate records for citizens. As a direct descendent of the English civil registration system, the system in New South Wales was established for these dual purposes. Then, as now, the Registry recognised its service to public administration by supplying data to government agencies.[1]

4.3 As no clear principles governing the collection and keeping of these records are enunciated in the relevant legislation, we have sought guidance from three sources: the Guidelines for the Operation of Personal Data Systems propounded by the New South Wales Privacy Committee in 1977,[2] those stated by the Australian Law Reform Commission, In its Report on Privacy in 1983[3] and the principles to be gathered from freedom of information legislation, particularly from those Acts in force in Victoria and the Commonwealth.[4] From those sources we have formulated three principles of general application:

> only the minimum personal data necessary should be sought and recorded;
>
> care should be taken to ensure the accuracy of all information recorded;
>
> access to the information should be consistent with the socially accepted purposes of the register.

4.4 These principles are so wen accepted as part of proper government practice that departure from them would require clear justification. The Commission can see no reason why the Registry of Births, Deaths and Marriages should depart from them. In general, we have found that the Registry abides by them.

4.5 We have received little complaint about the amount or nature of information collected by the Registry. Those complaints referred to in the Report relate to two matters:

> the accuracy of the information recorded and the capacity of the persons affected to correct inaccurate information; and
>
> the inclusion of potentially embarrassing or discriminatory information on certificates issued by the Registry, particularly when they must be produced as documents of identification for some purposes.

4.6 A variety of measures is used to ensure the accuracy of information placed on the register, although complete accuracy of the register is not an attainable objective. Informants must notify the Registry within one month of the registrable event occurring.[5] The Principal Registrar must register the event if he is of the opinion that the particulars are sufficient to warrant registration and if he has no reason to believe the particulars furnished are

inaccurate.[6] He has powers to make "such inquiries as he thinks fit"[7] and to require persons conversant with the event to furnish particulars.[8] It is an offence knowingly to furnish false or misleading information.[9]

4.7 The extent of verification of events recorded, generally speaking, is a matter left to the Principal Registrar's judgment. Although the Act requires certain people to be informants, (parents in the case of a birth or stillbirth[10] and the occupier of premises or a relative where a death occurs[11]), any person conversant with the facts may furnish information about an event to the Registry.[12]

4.8 In some cases the requirements for verification are specified. A medical certificate of cause of death or of perinatal death is necessary and must be signed by a medical practitioner.[13] Documents relating to the disposal of a body must be signed by the person responsible for the arrangements.[14] Marriage registration is effected on receipt of a certificate completed by the authorised celebrant.[15] Registrations of adoptions occur only on the authority of a court memorandum of adoption.[16] Before recordings of legitimations or parentage information are made, the Act provides for verification by statutory declaration or registration on the authority of a court order or declaration, and the concurrence of both parents in the information to be registered.[17]

4.9 Although the current system might not ensure complete accuracy of the register, the Commission is reluctant to suggest use of more thorough measures for collecting information. On the whole the information is obtained from those most likely to know its accuracy. Any further measures would require stringent means of certification and crosschecking. The result would be much more invasive of privacy than the current system. It would also be expensive to administer. As the Commission is not aware of serious complaints stemming from inaccuracies or misinformation entered on the register, it does not recommend the introduction of any new systems to produce improved accuracy, (The one exception to this recommendation is discussed at paragraphs 4.117-4.120 below. It concerns the supply of incomplete details on a death registration.) The register will continue to offer reasonably accurate information, but will not be a completely reliable source of personal data. So long as the possibility of inaccuracy is made known to those who use it, the Registry's practices should be regarded as complying with the principles outlined above.

4.10 A common cause of inaccuracy often reported in relation to the keeping of other personal records is the failure to update regularly the information contained in them. Data on the registers of births, deaths or marriages is not as susceptible to dating as many other sources of personal data. The information contained is of interest and importance largely because it is historical. Thus, there is no need to provide an expiry date for these records. The aim is, and should continue to be, to retain information indefinitely. However, inaccuracies may occur for other reasons. The original information may have been wrong or circumstances may have changed making it inaccurate.[18]

4.11 Most members of the public have access to their own records to ensure their accuracy and the Principal Registrar has power to amend to reflect the changes required.[19] The decision to amend is the Principal Registrar's. The person affected has no right to insist on the amendment and as the Principal Registrar is given authority to authenticate the amendments in any way he thinks fit, the views of persons other than the person affected may be sought and perhaps relied upon.[20] The people affected by them therefore have little control over the accuracy of entries on the register at present. The decision to amend the register lies entirely in the Principal Registrar's discretion and the Commission recommends that the person affected by an inaccuracy be given the right to request amendments to the register. The Commission's recommendation on this matter is discussed further at paragraphs 4.37 to 4.44 below.

4.12 The third privacy principle listed in paragraph 4.3 is that access to the information should be limited. In practice those affected by entries on the register generally have access to and control over the release of the information. Apart from the government and institutional access permitted by the Principal Registrar or authorised by statute, release of the information is by disclosure on the certificates issued by the Registry. At present such disclosure occurs in two ways. A certificate is issued when requested personally or through an acknowledged agent of the person concerned. Information is then disclosed to others whenever the certificate is used for purposes of identification. A certificate may also be issued on other than a personal application if in the circumstances the Principal Registrar is satisfied that the person concerned would have consented to it. Thus a lawyer or sporting club can obtain copies of information on the register, although in the latter case an extract certificate only will be supplied.

4.13 The Commissions recommendations on access to registered information and the form certificates should take are discussed below in paragraphs 4.14 - 4.24 and 4.34 - 4.36.

III. RECOMMENDATIONS

RECOMMENDATION 1: An Open Register

The Commission's principal recommendation is that the Register of Births, Deaths and Marriages should become an open register available to all members of the public, except for those parts which are closed by statutory authority.

4.14 In New South Wales, the register has always been closed, subject to certain qualifications (see below, paragraph 4.19). The Registration of Births, Deaths and Marriages Act 1973[21] gives the public no right to search either the indexes or the registers. Anyone wanting a copy of an entry on the register must satisfy the Principal Registrar of a sufficient reason for requiring it. The Principal Registrar has the discretion either to refuse the application or to issue a full or extract certificate.[22]

4.15 The intention of our recommendations for an open register is that the Registry of Births, Deaths and Marriages should provide open access to all its indexes, except those required by statute to be kept confidential. On payment of the prescribed fee, any person should be entitled to a full copy or an extract of any non-confidential register entry.

4.16 An open register, or open access, does not mean that the public has unrestricted access to the register books. As we understand it, the open register system in other jurisdictions operates in the following way:

The indexes to the registers are made available in the public area of the registries.

The public may search the indexes and request copies of the register entries to which they refer.

No access is permitted to the registers themselves, except by requesting identified copies.

A request may be made for an official search of the registers to be done by Registry staff.

Some parts of the register are closed. The indexes and entries relating to adoptions and stillbirths are not available except with special dispensation.

Such an open register system operates in England, Scotland and New Zealand.[23] We recommend that a similar register be introduced in the New South Wales Registry.

4.17 The Commission understands that the computer being installed in the Sydney Registry at present has capacity to implement an open register system. The fees structure is capable of being adapted to accommodate such a system. In other jurisdictions, the scales of fees imposed vary according to the detail of the information supplied by the applicant. A request which provides a precise reference to the certificate required attracts a lower fee than one which involves Registry staff in searching the indexes and entries in the register.

4.18 The reasons for the secrecy of a closed register are not made clear in the Registration Act. They appear to centre on considerations of privacy and confidentiality which are not necessarily given effect in the operation of the registration system or in other public registers in the State.

4.19 For a variety of reasons, the register is not totally closed at present and probably never can be. Both government and private institutions may gain access, although this is not widely known. Private citizens, on furnishing sufficient reasons to satisfy the Principal Registrar of a legitimate interest in the information, may also be given access without the knowledge of the person named in the entry. The confidentiality of the current system depends upon the exercise of the Principal Registrar's discretion in giving or denying this access. The principles on which the discretion is exercised are not publicly known and as no record is made of the people to whom certified copies are supplied, it is not possible to know whether privacy principles have been respected. There is no foolproof identity system, and therefore no practical way of verifying the identity of those applying for

access. The Principal Registrar must rely on the honesty of applicants in assessing whether to release the information. As there is no way of guaranteeing the effective operation of a closed system, and since we have received no evidence of abuse of the open register system, the Commission recommends that an open register be substituted for the existing one which may be accessible to those interested enough to deceive the Principal Registrar.

4.20 There is no doubt that at present a birth certificate can be improperly obtained and used to establish a false identity,[24] yet it continues to be used by many, including public authorities, as reliable evidence of identity. It is common practice for a birth certificate to be accepted uncritically, without requiring additional evidence to link the person tendering the certificate to the person named on it.[25] It is not, and never has been the function of the Registry to provide a person with a complete proof of identity. The introduction of an open register should make this plain to all using it.

4.21 In the Commission's view the possibility that the open register system will be used to gain access to another person's birth certificate merely to satisfy idle curiosity does present a significant privacy problem. We acknowledge that an open register will allow access to information on the register, some of which may be regarded by some people as sensitive; however the present system under which a certificate will be issued on any apparently legitimate application (see above paragraph 4.12) can lead to the same result. The greater concern about privacy arises where a person using a full certificate as evidence for a particular purpose (for example age or nationality) must reveal all the registered information and not only that relevant to the circumstances. In practice the proposals contained in our recommendation about the content of certificates (see Recommendation 3 discussed at paragraphs 4.34 to 4.36) will provide greater protection for privacy than at present. It is unlikely that applications for copies of certificates relating to other people will be made regularly or to such an extent as to cause concern.

4.22 We have no evidence that the practice in other jurisdictions over many years has revealed problems with the open register. A real possibility for abuse of privacy, however, lies in commercial applications of access to registered, information through the sale of computer links to the Registry data base.[26] The problem seems to have been avoided in those jurisdictions by giving free personal access to the indexes only, which contain information going little beyond what is more readily available from other sources.[27] Certificates are issued in response to individual applications and a not insubstantial fee is imposed, both of which discourage the extensive access necessary for commercial purposes. We believe that on-line access to the Registry's data base should occur only with statutory authority, or on clear principles of public benefit. Under New South Wales law the Privacy Committee has statutory authority to act as a privacy ombudsman. It seems an appropriate body to assess any applications for computer access to information on the registers.

4.23 Another problem in the current provisions for access to the register is that they rely for implementation on exercise of the Principal Registrar's discretion. An open register will eliminate the need for such a discretion. Wide, unregulated discretion is not acceptable unless necessary in times of emergency.[28] The principles established in privacy and freedom of information legislation are direct applications of this philosophy. As the operation of the registration legislation has not been reviewed in any real sense since its passage in 1855, it does not contain the principles and guidelines expected in modem legislation. While the Principal Registrar has published some guidelines for the exercise of his discretion in the Registry's manuals, many sensitive decisions are left completely unfettered and depend upon the Principal Registrar's assessment for determination.[29] The exercise of such wide discretion cannot be justified by reference to the material stored or the circumstances in which requests are made for its release.

4.24 Legislative decisions have been made to restrict access to some registered material and confidential registers have been created for adoptions, legitimations and stillbirths. The Commission recommends that this system be maintained and that when information is regarded by Parliament as so sensitive that it should not be released without official sanction, it should be recorded on a closed section of the register.[30] All other information should be available for public scrutiny.

RECOMMENDATION 2: Information Recorded

The Commission recommends that the Register should contain the minimum information necessary to fulfil the purposes for which it was created.

4.25 The Principal Registrar must record the child's sex, parentage, and the date and place of birth and such other particulars as he thinks fit.[31] The particulars currently sought under this discretion and included on the birth register are:

the father's age, occupation, place of birth;

the mother's age, maiden surname, place of birth, and optionally, her occupation;

where the parents are married, the date and place of marriage, and previous children of the marriage (including deceased but not stillborn); and

the name and address of the informant.

Previous versions of the prescribed forms sought information which was entered on the register about:

the mother's previous married surname;

the name of the doctor, nurse or other persons present at the birth; and

whether the child was present (ie when registration was effected).

4.26 The additional information which the Principal Registrar requires is consistent with the purposes for which registration occurs. Most of the particulars serve to identify the person more accurately. All particulars requested also provide statistical data considered necessary (by the Australian Bureau of Statistics) for demographic records and medical research. The prescribed form follows precedents from the establishment of civil registration in New South Wales which, in turn were modelled on forms used in other colonies and in England. Even then there were some who objected to the "impertinent" and "inquisitorial" requests for information made for registration.[32]

4.27 Similar concerns have been expressed recently by those who argue certain details are inappropriate, unnecessarily embarrassing, or create the potential for discrimination. Reference to parental marital status, occupation, or ethnic background may cause problems. Submissions drew attention to the privacy implications of having large holdings of sensitive personal data at the Registry especially when computerisation of Registry operations will enhance facilities for storage, retrieval and transfer of data.

4.28 The amount of information currently entered on the register was considered acceptable in the majority of submissions to the Commission, and most agreed that there should be no change in the amount of information requested apart from the addition of a statement of the mother's occupation. Current Registry practice permits optional recording of this information about the mother, while making it mandatory to include the father's occupation. This practice was adopted only after complaints to the Anti-Discrimination Board. Submissions in response to our proposal in the Discussion Paper agreed that the practice was unnecessarily discriminatory; if information about the occupation of one parent is considered relevant, then the same information about the other parent must also be relevant.

4.29 While there are those who would limit the amount of information sought at registration, there are others who argue that as much information as possible should be recorded. To this end, suggestions were made to include the following data on the register:

Precise addresses, rather than general locality.

Optional recording by Aborigines of traditional names, tribal relationships, and places of family origin.

Details of de facto relationships, including children.

Ethnic background, nationality or citizenship of parents.

Details of children of the marriage, including details of stillborn children.

Previous names, and all previous issue, of each parent.

Full identifying details of informant.

4.30 Each of these suggestions relies on the role of the Registry as keeper of information valuable for individuals in proving identity and descent. Submissions pointed to benefits such as tracing hereditary health problems, reclaiming ethnic or Aboriginal identity, or just providing a more complete identity for a person. Not surprisingly from a community in which interest in genealogy is very strong, it was argued that private and family interests could be better served by more extensive entries.

4.31 As previously suggested the register should contain as little information as is necessary to allow it to carry out its proper purposes. The provision of information to the Registry is compulsory and the Commission recommends that it should continue to be compulsory.[33] However, the compulsion to supply information should be limited to information genuinely required in accordance with the purposes of registration. These purposes include the maintenance of demographic records, personal identification, and the collection of material for genealogical purposes.

4.32 Although no analysis justifying information currently required to be placed on the register has been presented to the Commission. We are of the view that each piece of data is of direct evidentiary value to establish proof of a person's identity and descent. We are not satisfied that the register would be as useful if less information was recorded. Current statistical users assert that they are able to justify the use of every item recorded.[34] For genealogical purposes, additional information may well be desirable, however we are not persuaded that compulsory recording of these further matters is necessary. Nor do we regard the additional burden imposed on the Registry to be warranted.

4.33 The Commission has concluded that the information currently required in respect of births is appropriate. The only addition we recommend is to the birth register to record the mothers occupation. We regard the current system of recording this information at the option of the applicant to be discriminatory.

RECOMMENDATION 3: Certificates

The Commission recommends that the certificates issued by the Registry should contain only the information requested by the applicant.

4.34 Currently, Registry practice relating to the release of information on the register is based on the Registration Act and the exercise of the Principal Registrar's discretion under that Act, as well as on several State and Federal statutes which authorise disclosure of registered information.[35] Private individuals have access to records (other than those created before 1899) only where the Principal Registrar is of the opinion that they have sufficient reason. The amount of information made available depends on what the Principal Registrar thinks is necessary having regard to the reason for which it is required. Either a full certificate with all registered details, or an extract certificate is available. Access by government bodies occurs extensively by way of copies of all registrations and/or selected compilations, and in response to specific requests. Computerisation will permit on line access by many existing users, and possibly other agencies not currently having access to Registry data.

4.35 An open register as we have recommended does not mean the dissemination of all information contained on it. The most frequent use of the register will be the provision of certificates on personal application and the purposes for which they are required will be specific. Typical reasons will be to accompany passport applications, to support applications for probate and to provide evidence of age, marital status, or nationality for a variety of purposes. It is the Commission's view that the information on the certificate should be limited to that which the applicant wishes to obtain and provide. Thus, a school requiring proof of age on first admission has no need for information about legitimacy or nationality; the Passports Office does not require evidence of sex change: and the marriage celebrant need not know nationality.

4.36 There should be flexibility in the forms in which extracts and certificates of registered information are issued. A person requesting a copy of details from the register should be permitted to specify the content as required for the purpose intended. Any certificate other than a full copy of the entry should bear an appropriate notation that it is less than a full copy. In this way only those details which the person wishes or needs to disclose would be

included on the certificate and embarrassment or discrimination caused by the other information would be avoided. There was considerable support in submissions responding to this proposal in our Discussion Paper. Computerisation should make the recommendation easy to implement.

RECOMMENDATION 4: Corrections and Deletions

The Commission recommends that the Register should contain an accurate record of all entries made on it. There should be no deletions or expungement to conceal sensitive or embarrassing material. People affected by entries on the register should have access to ensure that those entries are correct.

4.37 At present the register may be corrected or altered only in accordance with the Act which authorises the Principal Registrar "upon such evidence as appears to him to be sufficient, and if he is satisfied that in the circumstances it is proper to do so" to effect the correction of a clerical error, or an error of fact or substance in a recording.[36] Alterations occur frequently but the Registry approach is cautious. Obvious clerical errors detected by Registry staff are corrected by them, but all outside applications are considered by the Principal Registrar only when supported by a statutory declaration and other verification from external sources.[37]

4.38 As the official record of the event, an original entry in the register must be capable of being modified. No counter argument has been raised before the Commission. The initial recording may be deficient, containing clerical errors, omissions, or errors of fact or substance. These may occur inadvertently or deliberately and if they occur, it must be open for them to be remedied. As it is evidence of identity and descent, a registration should be capable of alteration in all material ways.

4.39 The manner in which an alteration is made on the register is a matter for the Principal Registrar's discretion, although the date of authentication must be recorded.[38] It is possible to amend the register either by complete deletion of the erroneous or superseded entry, and the insertion of the new material which amounts to re-registration, or by retention of both the original and replacement entries. In practice, both the original and the replacement are usually retained. Apart from alterations relating to legitimation and adoption, which are governed by statute,[39] re-registration is used only rarely.[40] The fact that an alteration has been made is thus permanently recorded on the face of the register. A full certified copy of an amended entry shows all details, unless, at the Principal Registrar's discretion, the original details are omitted.

4.40 The Commission believes that the register should provide a complete record of all entries made on it. Unless an entry is shown to be incorrect, it should not be removed from the register. Sensitive or embarrassing information, other than information which is protected by statute, should be available on the public record. However, it need not be disseminated automatically on request for a certificate, because of the proposals contained in Recommendation 3. (see paragraphs 4.34 - 4.36). The contents of a certificate should be those requested by the applicant, in accordance with the purpose for which it is required. A person using a certificate for specific purposes of identification should be able to request that only the amended or current details be shown on an extract certificate, and thus avoid the need to disclose indiscriminately sensitive information irrelevant to that purpose.

4.41 We recommend that anyone affected by an entry should be able to apply to have it corrected if he or she believes it to be inaccurate. Such an application should be accompanied by a statutory declaration setting out the corrections required, and the supporting evidence. The Principal Registrar should make the correction if satisfied that the original recording was inaccurate. Where the entry affects someone who is without legal capacity, the application for a correction should be made by the person's guardian or legal representative.[41]

4.42 Inaccuracies about people may be contained in entries concerning themselves or others. Thus, particulars about a child may be inaccurately described on an entry about a parent or particulars about relations may appear inaccurately on a death certificate. We envisage that requests for correction may be made by the person affected by the inaccuracy, regardless of the record on which it appears. Where an applicant seeks to correct an entry on the record relating to another person, the Principal Registrar must be satisfied that the other person either concurs, or has no valid objection to the alteration being made.

4.43 Amendments to a child's birth registration should be by application of the child's parents or guardian/s in the same way as the birth is registered. Unless the child's guardians are in agreement, no alteration of the register should be made. It is not the Principal Registrar's function to determine or adjudicate the competing claims of parents or guardians. That is a judicial function exercised in guardianship proceedings.

4.44 Clearly substantiation is necessary before changes are incorporated in the register. Current practice requires a statutory declaration by the person applying to alter the entry, supported by evidence from an objective source. We understand the need for caution but this represents a significantly higher degree of proof than applies to initial recording of the entry. The desire and opportunity to falsify the record would appear to be as great at that time as it may be subsequently. An application by statutory declaration which cites evidence in support would appear to be sufficient authentication.

RECOMMENDATION 5: Birth Registrations

The Commission recommends that both parents should be required to register the birth of their child.

4.45 The procedures for registration of a birth are governed both by the Registration Act and Registry practices. The duty to furnish particulars falls on a parent[42] who is for the purposes of the Act the father, mother or guardian of the child.[43] The Registry requires only one person to fulfil this obligation where the parents are married. Following the decision in the *Ms L* case,[44] when married parents lodge the prescribed forms independently of each other, the registration will be made on the basis of the information contained in the one received first. The mother may register the birth of an ex-nuptial child alone, or jointly with the father.[45] The father alone may not be the informant without her concurrence unless she is dead or missing.

4.46 The father of an ex-nuptial child may, but is not obliged to, furnish particulars to register the birth of his child.[46] His particulars are recorded in accordance with s42A of the Registration Act which incorporates into the registration system the presumptions of paternity in the Children (Equality of Status) Act 1976.[47] The Principal Registrar may enter his name as the father of a child if on receipt of:

An acknowledgment of paternity made jointly with the mother; or

a sole acknowledgment of paternity to which the mother makes no valid objection; or

a court order concerning custody, maintenance or payment of expenses which names him as the father; or

a Supreme Court declaration of paternity.

4.47 Registration is effected on the basis of particulars supplied in the Form of information. The prescribed form contains two schedules: one used only when paternity of an ex-nuptial child is acknowledged, the other in all other cases. These have identical sections about the child and each parent, but there is no reference to the parents' marriage on the version in which ex- nuptial paternity is acknowledged.

4.48 The law and practice of registration have been criticised as being discriminatory on the grounds of sex and marital status. The Act reflects the attitudes of an earlier age when the main concern was to guard against malicious attribution of paternity, and the rights of parents varied according to whether they were married to each other. Unmarried parents cannot name each other on the register. As a consequence the mother who is not married to the child's father may register the birth of her child without reference to the father. She may thus conceal the identity of the father. However, the mother may not declare a man to be the father or register the child in his surname without his acknowledgment, even if he is dead or missing. Similarly the father is given no right to register the birth without the mother's consent, unless she is dead or cannot be located. The father of an ex-nuptial child is not prevented from having his name placed on the register, but he must comply with more in a onerous formalities than the married man. As a last resort he must obtain judicial declaration of paternity. The Act recognises differently a presumption of paternity arising from birth within marriage and the presumptions of paternity arising from cohabitation[48], and does not afford de facto relationships the recognition accorded the rest of the relationship by the De Facto Relationships Act 1984. In particular the Registration Act equates the father in

a stable but de facto relationship with one who merely fathers a child in a casual liaison. It does not distinguish between the father who wishes to assume, or is prepared to accept, all the responsibilities of a parent and the one who does not.

4.49 As well as making reference to the legal issues, submissions on this matter drew attention to the practical problems associated with protecting the interests of the mother, father and child. It was argued that registration of the father's name is important to protect a child from discrimination and to ensure rights of inheritance, and that it should occur without unnecessary obstacles. There was concern that if registration could be effected without proof of identity, either parent, but particularly the mother, may be forced to defend false, spiteful, or malevolent claims of parentage. There was support for giving the father whose paternity was acknowledged, proved, or presumed at law the right to register. Yet the difficulty of placing the Principal Registrar in the position of determining whether a man is entitled to register was recognised.

4.50 In arriving at our conclusions, we considered first the purposes of registration. It creates a public record of, the fact of, and particulars about, the birth of a child. It provides evidence used in the legal proof of identity and descent of the person. It is in the interests both of the public record and the child, that the entry on the register be as accurate and complete as possible. It is also in the interests of the child that the procedures of registration do not create a legal disability or a basis for discrimination. Of great, but necessarily secondary importance, are the interests of the parents. Registration procedures should operate, without discrimination, to permit acknowledgment of parentage. It is therefore desirable that, wherever possible, the names and particulars of both parents should be entered on the register.

4.51 The Commission believes that registration practice should coincide so far as is possible with practice under the law of guardianship. Since the commencement of the Commonwealth Powers (Family Law - Children) Act 1986 in October 1987, guardianship of all children has been vested in "each of the parents" by s63F(1) of the Family Law Act 1975 (Cth). This probably means that each parent may exercise the powers of guardianship individually so long as there is no challenge from the other. When a dispute arises the parents will have to come to an accommodation or seek a court order to authorise action to be taken. These provisions apply to all parents, whether married to each other or not.

4.52 The Registration Act already contains examples of the procedures necessary to allow the Commission's recommendation to be implemented. They appear in s42A which was added in 1976 to give effect to the policies of the Children (Equality of Status) Act 1976 concerning ex-nuptial children. These procedures should now have general application. Section 42A(2)(a) directs the Principal Registrar to register a birth on the joint application of the mother and father of an ex-nuptial child. If the application names the father, but is made by one parent without countersignature by the other, the Principal Registrar may not enter the details until he has notified the other party and given them an opportunity to object.[49] The Commission recommends that this procedure should be used for the registration of all births.

4.53 Where particulars of the other parent are not given, the birth should be registered with those particulars provided. This would not preclude the other parent from making an application to change the register at some later stage. If the later application is made jointly, the Registry should act on it without further supporting evidence. If not, the Registry should retain the original entry until satisfied that the other party does not object to the amendment or until a court order is made directing the change.

4.54 There are practical difficulties which intrude on any administrative procedures for the acknowledgment of parentage. Although rare, there are circumstances in which the mother's identity is unknown or concealed (by false declaration). More common are situations in which paternity is not revealed, either deliberately concealed by the mother, or because as a matter of fact it is not known. Statutory presumptions in force under the Artificial Conception Act 1984 may leave a child fatherless despite public acknowledgment of paternity by the father.

4.55 These situations create problems beyond the province of the law and practice of registration. It is not the function of a Principal Registrar to make inquiries as to the presumptions of paternity which may apply, nor is it a duty to oversee any compulsory paternity testing. The statutory powers do not extend to the exhaustive verification of the identity of persons named on prescribed forms. It must be open to the Principal Registrar to effect registration on the basis of information supplied by the mother if only in those circumstances in which the child's father is not reasonably identifiable.

4.56 Our proposals are designed to permit the father of an ex- nuptial child to have his name recorded on the register without unnecessary difficulty, unless the child's mother denies his claim of paternity. We consider that requiring him to prove paternity in court when the mother denies it does not constitute undue discrimination under the Registration Act and is consistent with the policy and provisions of the Children (Equality of Status) Act 1976.

RECOMMENDATION 6: Registration of Name

The Commission recommends that it should be compulsory for parents to register a name for their child at birth.

4.57 The Commission regards it as the child's right to have a name registered at birth. This is consistent with Principle 3 of the United Nations Declaration of the Rights of the Child.[50] Section 11(3) of the Registration Act already requires that a name be given as part of the particulars required for registration of a birth. It is clear that the name referred to in s 11(3) is the forename and not the surname.[51] On some occasions a child is registered without a name.[52] This is undesirable and parents should be encouraged to provide a name within the month given for registering a birth.[53]

4.58 The recognition of the importance of bestowing a name upon a child at birth made by the United Nations in the Declaration of Human Rights is compelling. A child's name is chosen at birth by the guardians, which in most cases will be by the parents together. We see it as both their right and their duty to choose a name for the child. Registration of the birth of the child in the chosen name is part of that duty. Any dispute between the guardians over names for the child is beyond the scope of registration law and outside the Principal Registrar's function to decide. It is a matter to be resolved in guardianship proceedings. For the child's sake the matter should be resolved expeditiously in the Family Court of Australia.

RECOMMENDATION 7: Choice of Names

The Commission recommends that the names of a child entered on the register should be those chosen by the parents. The only exceptions to this freedom of choice should be made to ensure that names are not obscene, offensive, or unreasonable in length. The parents should be free to register the names, including the surname, by which they intend the child to be known.

4.59 Although there is no statutory authority for the practice, on occasions the Principal Registrar has refused to register names chosen by parents. This has occurred when names were considered derogatory or too numerous, it has been put to us that the Principal Registrar should have a limited discretion to reject a name, exercised only for reasons of public policy. An unreasonably long series of names or an obviously obscene or offensive name would be rejected on this basis. Apart from these reservations there appears to be no compelling reason why the parents' complete freedom of choice at law to choose a name for their child should not be reflected in the law and practice of registration. The circumstances in which a Principal Registrar may choose to exercise discretion should be very restricted.

4.60 The Registration Act requires the "name" of the child to be entered on the register.[54] The Form of information currently used to register a birth requires the informant to nominate "Christian or other names" and a "surname" for entry on the register. The Principal Registrar specifies the approved types of surnames in which a registration may be made. Following the decision of the Equal Opportunity Tribunal in the *Ms L* case,[55] the Registry has altered its practice and now will record as the surname any of, or a combination of any of, the surnames of either parent acknowledged. Registration in a surname of either of the parents when they are man-led is permitted without the need to obtain the consent of the other. If the parents lodge forms separately and show different surnames, the first to be received is registered. The mother of an ex-nuptial child may not select the surname of the child's father without his consent.[56] Whilst the prescribed form indicates that the Principal Registrar will not accept a surname different from a parent's, (even if only a spelling variation or anglicisation) there is evidence that it has been the practice recently to permit some departure from this rule, especially to respond to the naming practices of some ethnic groups.

4.61 It is the Registry's view that the restrictions on the surnames in which a child may be registered do not deny the parents the right to choose a name. Consistently with the common law, registration is considered to be a record of the birth and not to constitute evidence of a person's lawful name. The Registry's rules for recording the

event are based on the convention by which a child takes the parents' surname. They do not attempt to settle the legal surname of the child. This is acquired by use and reputation. The prescribed form indicates that any other name lawfully acquired by the child may be recorded on the register after proof of its use for 12 months.

4.62 Surnames have always been assigned by the Registry when compiling its annual index to the register of births, but they have been recorded on each entry only since 1966. This was done to accommodate the limited indexing capacity of the computer then installed at the Registry. Current capacity does not impose such restrictions, and the Registry acknowledges that registration of a birth with no surname, or with any surname the parents may nominate, is now administratively feasible.

4.63 Current Registry practice recognises the desirability of a child having a surname which reinforces links with the family unit. It also recognises the importance, of a family name for genealogical research. Many accept the Principal Registrar's argument that the practice is efficient, appropriate to naming traditions in Australian society, and does not detract from the right of parents to choose their child's name at common law.

4.64 To others the practice is unnecessarily restrictive and discriminatory. They argue that it does not support the freedom of choice afforded parents by the common law. The register must later be altered and its evidentiary value diminished when the parents are unable to record the name they actually give to the child. It is also argued that the practice discriminates against those whose naming traditions are not accommodated, and those who wish to vary their family name at the time of the birth of a child. This practice forces some to register a surname which they have no intention of using and later to record a change of name on the register. It is doubtful that the entry on a birth register of a surname never in fact used by the child is an effective means of reinforcing family ties.

4.65 Of concern to some is the Registry requirement that a surname must be assigned on the child's birth registration. The Commission has received representations from parents who wish to give their child forename/s only, and who have had difficulty in gaining the Registry's approval for registration in this manner.

4.66 Registration creates a public record of the event and the basis for proof of identity for the individual. Neither purpose is served by the restrictive naming requirements currently imposed by the Registry. For the statistical needs of government, the surname is immaterial. If identifying data is to be extracted, an entry in the surname actually used would appear to be preferable. Similarly, as a document of identification, a birth certificate in the surname in use is more accurate.

4.67 Nowhere in the legislation of New South Wales is there any restriction on the common law principles of the law of names. A person's true legal name, is the forename. A surname is a matter of convention rather than a legal necessity. It is the right of the guardians to assign a child's name at birth and to determine the surname by which the child is to be known. The conventions on which Registry practice for surnames is based have no greater force at law than rebuttable presumptions. There is no reason for Registry practice to depart from the common law of names.

4.68 It is the Principal Registrar's duty to enter the name of the child on the register. The term "name" is not defined in the Act, but there are persuasive authority,[57] administrative precedent[58] and references in other parts of the Act[59] to support the view that name means forename only and not surname. A surname is not a legal necessity. Thus the Principal Registrar probably does not have power to require parents to give a child a surname and record one on the register if it is their intention that the child will not be known by any surname.

4.69 In the usual case a child will be known by a surname. Parents may accept the surname conventionally assigned, or avoid it by choosing another. They have that discretion. It is desirable that the surname entered on the register reflects their decision about the surname by which it is intended the child be known. This could include a recording in the form "surname Smith-Jones, known as Smith". When no surname is entered on the register, it may be presumed that the child takes the name assigned by convention, unless evidence is produced of consistent use of another surname or that no surname is used. Parents should therefore be encouraged to enter a surname but should not be forced to do so. They should be made aware, however, that if they do not choose a surname for their child, a name will be assigned which coincides with the convention applicable to their circumstances.

RECOMMENDATION 8: Change of Name

The Commission makes the following recommendations on change of name:

(i) there should be no change to the existing law under which a change of name is a matter of choice for an individual, and for which registration is not necessary.

(ii) the evidence required to support an application to register a change of name should be stated in Regulations under the Registeration Act.

(iii) the statutory prohibition on recording a change of surname following marriage should be removed.

4.70 The Principal Registrar is authorised to record in the birth register a name given to a child after registration (that is, an additional name or simply a name where the child was registered unnamed except for a surname).[60] Where a person effects a lawful change of name (other than a change of surname associated with marriage), that may also be recorded on the birth certificate (or record of adoption).[61]

4.71 Section 34 of the Registration Act gives the Principal Registrar discretion to require the written application to be supported by such evidence as appears to him sufficient. It is Registry practice to require evidence of the abandonment of the former name and the acquisition by usage and reputation of a new name.[62] Evidence of exclusive use of a name for a period of at least one year must be provided to satisfy the Registry of the acquisition of a new name. A deed poll or similar instrument is not considered sufficient evidence. A statutory declaration made by the applicant, containing evidence of the circumstances prior to the period of exclusive use of the new name, and reference to the extent of its use must be furnished. Documentary evidence and a supporting statutory declaration from another person are also required.

4.72 The Registry has special requirements before a change of name will be recorded for a minor. Normally consents from both parents, and the child if over 15, are necessary, but this may be varied at the Principal Registrar's discretion. Whilst he recognises that generally one parent does not have the right unilaterally to change the surname of a child, he will consider such applications. When he is satisfied it is in the best interests of the child, a change will be registered.[63]

4.73 Various concerns were raised in submissions about registration of change of name. There was some dissatisfaction with the procedures for changing the surname of a child. There was wide support for the proposal in our Discussion Paper to repeal the prohibition on recording a change of surname "consequent upon or effected after ... marriage".[64] There was much discussion of the suggested options for reform of the Registry practice which imposes more rigorous evidentiary requirements to authenticate a change of name than are required by the common law.

4.74 Currently, there is no need to make an entry on the register to effect a change of name, nor is it mandatory to record a legal change of name on the register. The name in use may therefore be different from the entry on the register. The failure to register may make identification difficult but it does not make it impossible since deeds poll and other less formal means of identifying the change can be used.

4.75 The purposes of the registration system do not extend to maintaining an up to date identity system. Certainly proof of identity is enhanced when the birth certificate shows the change of name, but neither this nor the creation of a public record of the birth makes it imperative to register every change of name. Registration is not necessary at common law to make a change of name lawful. There is no reason to require it under the Registration Act. Therefore, we recommend that registration of a change of a name should continue to be a matter of choice for the individual.

4.76 Since registration is a valuable aid to identification, it should be made more accessible to those who wish to use it as evidence of a change of name. Registry practices currently insist on proof of exclusive use of a new name for a period of at least 12 months, and the supporting evidence referred to in paragraph 4.71, before accepting that a legal change of name has occurred. Whilst we understand the Registry's caution, in combination these requirements seem unduly technical and impose greater, restrictions on the recognition of a change of

name than does the common law. As well, the verification required is far more stringent than for an initial registration where no supporting evidence is required. The common law imposes no qualifying period for a change of name. Acquisition of a name is by usage and reputation, and the change operates when the person becomes known by the new name.[65] Registration of the change does not make it lawful; it merely reflects the change which has occurred. Although stipulation of a time period is arbitrary and may be restrictive, the Commission accepts that it is necessary to protect the integrity of the register. The evidence required to support the acquisition of the new name is properly a subject for regulation under the Registration Act, and not for the unfettered exercise of the Principal Registrar's discretion. There appears to be no reason why the evidence provided by a deed poll should not be sufficient, or proof of exclusive use for a period of six months.

4.77 As a child's birth registration is created on information furnished by the guardians, they should have the authority to change details on the register, including the name of the child. When both parents are the guardians at law, the application should be made jointly by them. There should be provision for one parent to exercise the right to change the child's name if the other parent is missing or cannot be contacted. The Principal Registrar should only act on such an application when evidence is produced which satisfies him that the other parent is in fact missing or permanently out of contact with the child. If the parents are in dispute a joint request will not be possible. It is not the Principal Registrar's function to settle disputes between guardians. The proper forum for this is a court, hearing an application about a child's name as an incident of guardianship. Once the issue is resolved by a court, a judicial order determining the name by which the child is to be known will support the guardian's application for alteration of the register.

4.78 We can discover no explanation for the prohibition on the Principal Registrar's recording a surname change following marriage, although it is a provision common to several Registration Acts.[66] Perhaps it reflects the view that acquisition by a woman of her husband's surname is no more than a convention and does not alter her legal name. Yet this does not accord with other aspects of the common law of names which permit a person to lawfully acquire any name or surname. It operates to disadvantage a married woman who must produce birth and marriage certificates to establish her identity. It discriminates against the married woman compared with the woman who adopts the surname of her de facto husband. While it is administratively convenient for the Registry not to be required to alter birth registrations for married woman, we find it difficult to justify this prohibition and recommend that it be lifted. It is a discriminatory practice and any difficulties the Registry may experience in effecting the possibly large number of amendments should be overcome by the introduction of the computer system.

RECOMMENDATION 9: Registration of a Change of Name

Administrative responsibility for the registration of changes of name should be transferred from the Land Titles Office to the Registry of Births, Deaths and Marriages.

4.79 Responsibility for maintenance of the register on which a deed poll or other instrument evidencing a change of name is entered currently rests with the Land Titles Office which administers the General Register of Deeds. This is a legacy of the time when the Registrar General's Department kept most of the State's public registers. Those not related to land titles have generally been transferred to other government agencies. It has been proposed that responsibility for registering a change of name be given to the Registry of Births, Deaths and Marriages.

4.80 It seems logical that registration relating to names be centralised at the Registry of Births, Deaths and Marriages, and the Principal Registrar be responsible for maintaining the public records of changes of name. This would remove a source of confusion and inconvenience for people who wish to register such instruments and obtain access to registered information. We understand that the proposal has the support of the relevant administrations. We recommend accordingly.

RECOMMENDATION 10: Registration of Stillbirths

The Commission recommends that:

(i) a permanent Register of Stillbirths should be created and maintained. The register should not be open to the public, but certificates containing the information entered on the register should be available to the parents.

(ii) The definition of stillbirth in the Registration Act should be amended to accord with the definition used for medical purposes.

4.81 A stillbirth occurs with the delivery of a child who is of at least 20 weeks gestation or at least 400 grams weight and has not breathed after delivery.[67]

4.82 The Principal Registrar is obliged to register each stillbirth of which he ascertains particulars "sufficient to warrant registration".[68] Particulars should be supplied by a parent, but any other person conversant with the facts may, using the prescribed form for registration of birth.[69] In addition a medical practitioner must submit a medical certificate of cause of perinatal death, and the person responsible for the disposal of the body of a stillborn child must lodge the prescribed form for registration of death.[70]

4.83 The manner of registration is at the Principal Registrar's discretion.[71] The birth is included in the birth register index with a notation of stillbirth. The "stillbirth register" consists of all relevant documents lodged, kept in alphabetical order at the Sydney Registry, and in notebook form in local registries. No birth or death certificate is issued, but an acknowledgment of notification of a stillbirth may be sent to parents on request. Records may be cancelled or destroyed after two years,[72] although it appears records for the past five years are extant.

4.84 Substantial dissatisfaction with the law and practice of stillbirth registration is felt by medical and social work professionals and the parents of children who are stillborn. Their criticisms are that registration serves public purposes only and ignores the important personal need of families who desire formal recognition of the birth of their child. In fact, because of the statutory definition of "birth", the parents are not regarded as having given birth to a child at all. The law requires compliance with procedures as though birth and death registrations are to be made, but particulars of the event do not appear on the permanent public record. It is treated as a non-event, and no validation by way of certificate is available to the family.

4.85 The objective of proposals for reform is to remove the distinction created by the Act between the registration of stillborn and live born children. This should be achieved by abandoning the separate register for stillbirths which is capable of cancellation, and having common registration for all births, with provision for an appropriate notation on the entry for the stillborn child. A certified copy of such a registration should be available to parents on request. Associated changes would also permit recognition of the stillborn child as a sibling in all registrations for members of the family.

4.86 Submissions to the Commission on this issue display considerable agreement amongst interested parties. Their experiences and research suggest that these reforms would reflect changes which have occurred in recent years to attitudes to the grieving process.[73] It is now widely accepted that this process is fostered by the appropriate recognition of the loss of an expected child. There is also precedent for reform in Victoria and the Northern Territory where certificates are now available for a stillbirth registration.[74] Similar reform is proposed in Queensland.[75]

4.87 Compulsory registration of stillbirths began in New South Wales in 1934, to allow reliable data to be collected for medical research.[76] For the purposes of the Registration Act, the child was deemed to have been born alive and to have subsequently died.[77] The procedures now followed commenced in 1969.[78] The Registry's perception of the purpose of stillbirth registration is confined to administrative purposes and does not recognise any function to cater for the needs of private citizens. Although the Act contains no prohibition on the issue of certified copies of entries in the stillbirth register, Registry policy, based on its view of public opinion, has been to refuse any requests. The Principal Registrar, however, has indicated that he would be willing to alter Registry policy and seek amendment of the legislation if a need is demonstrated.

4.88 There appears to the Commission to be no reason why the registration system should not serve the dual purposes for stillborn registration that it does in all other cases, it should be possible to accommodate the basic demands of those seeking reform by altering Registry policy within the existing legislation. Preservation of the

register and the issue of certified copies of entries would be a minimum response. It may be necessary, however, to make extensive amendments to the Registration Act in order to remove anomalies in the definitions of "birth" and "stillbirth" and to remove the differentation between the registration of each, and embody the changed policy in legislation.[79]

4.89 The stillbirth register should be created and maintained according to the models proposed in our recommendations regarding birth registration. This would place upon parents the duty to furnish the particulars required as for a birth registration, and require the entry of those particulars on a permanent register. Access to certified copies of an entry would be given on request to the parents of the stillborn child. The register could also show siblings of the stillborn child, and the child's name could be included on any registrations of family members in the future.

4.90 Another aspect of stillbirth registration law raised was the inconsistency between the legal and statistical definitions of stillbirth. Whereas the Registration Act refers to a child "who did not breathe after delivery",[80] the statistical criterion is "whose heart did not beat".[81] It has been argued before the Commission that the anomaly should be removed by amending the definition in the Registration Act to make it conform with the definition used in the compilation of medical statistics.

4.91 The definition of a stillbirth child which appears in the Registration Act is but one definition used in the legal system to determine whether a child has been born alive.[82] There is no uniformity in these definitions, and none in comparable registration statutes in other Australian jurisdictions. Submissions on this issue from the medical profession have highlighted the inconsistency between the Registration Act's definition and that used by medical statisticians in this State. We note, too, that the definition for registration purposes has altered, over time, to reflect changes in the medical view of viability of children at birth.

4.92 In our view the purposes of registration would be best served' by a definition of stillbirth in the Registration Act which is of value to the collection of medical statistics and medical research, but which simultaneously meets the private needs of the parents of a child who is not born alive. We have received advice from the Department of Health that the definition should be:

> a stillbirth is the complete expulsion or extraction of a child from its mother in which the child is at least 400 grams at delivery or 20 weeks gestation (if birth weight unknown) and does not either breathe or have a heart beat.[83]

Our recommendation endorses this. We recommend that the definition of stillbirth in the Registration Act should be amended so as to remove any inconsistency with the definition used for the purposes of medical statistics.

RECOMMENDATION 11: Registration of Adoptions

The Commission recommends no change to practice in the registration of adoptions. Information on the original birth registration of a child who is subsequently adopted should be retained permanently, although not made available for public access.

4.93 The adoption of a child is recorded by the Registry as a re-registration of the child's birth. The original entry is cancelled. A new registration is made of the child's name and parentage to reflect the new legal and social relationship created by the memorandum of adoption.

4.94 The process of adoption is governed by the Adoption of Children Act 1965 and administrative responsibility is vested in the Department of Family and Community Services. Adoption occurs by court order, making the child the lawful child as if born to the adopter. The Adoption of Children Act provides that a memorandum of adoption, containing details of the child and adopting parents, is to be sent to the Principal Registrar.[84] The Registration Act requires the memorandum to be registered and a reference to it made on the child's original birth registration.[85] The memorandum becomes the child's birth registration, from which a birth certificate is supplied. The original registration is cancelled, but not extinguished from the register. A certified copy is available only with the consent of the permanent head of the Department of Family and Community Services, or by a court order.[86] The policy of governments in New South Wales since 1967 has been to maintain the confidentiality of adoption records and to refuse adopted persons access to their original birth registration.[87]

4.95 Agitation for the abandonment of closed adoption records has been growing in New South Wales especially since at least two Australian States[88] have followed other countries[89] in giving adopted people over 18 the right to obtain a copy of their original birth certificate. We have received several submissions which canvass the experience of these places and argue that adoption and registration law should be amended to reflect the changing public attitudes to adoption and to permit release of identifying information both to adopted persons and relinquishing parents. We were urged to consider reform of registration law to accomplish this.

4.96 Adoption law is governed primarily by the Adoption of Children Act 1965. The Registry's role is to store information about two events, the child's birth and the adoption, and to be able to make available a certified copy of information on its register whenever authorised by law. At present the Registry is authorised to provide evidence of identity based only on the child's legal status as recorded in the adoption order. This reflects current policy on adoption. The underlying principles are those of adoption and not registration law. Reversal of that policy is a matter for Parliament and will occur on grounds unrelated to registration law and practice. Should such a decision be made, it is essential that the original registration be in existence so that any change in policy can be implemented. The Registry must ensure that the records of children's original birth registrations are permanently maintained on the register of births so that access to them is possible. Therefore, we recommend that information in the original birth registration of a child who is adopted should be permanently retained by the Registry. Release of that information is not a decision for the Registry but the Registry should be able to give access to the information if and when the policy alters.

RECOMMENDATION 12 - Registration and Artificial Reproduction

Consistently with its recommendations on the registration of adoption, the Commission recommends that the Registry of Births, Deaths and Marriages should become the repository of all information relating to the parentage of children born through use of any of the artificial reproductive techniques. This information should be held permanently, initially on a closed register, until decisions are taken on the storage and release of the information.

4.97 The Registration Act requires that particulars of a child's parentage be recorded.[90] The Principal Registrar enters the full names of the child's fat-her and mother. These are not defined in the Act, but as the law and practice of registration developed when only natural reproduction was possible, it must be assumed that only biological parentage was intended. Now that artificial reproductive technology is employed, several categories of "parent" exist. By the use of artificial insemination, embryo transfer, in vitro fertilization and surrogacy, children can be created with numerous combinations of biological, gestational, and social parents. The issues for registration are first, which parentage should be recorded, and secondly, whether any record should be made of the use of this technology.

4.98 The register of births in New South Wales appears never to have acknowledged any but social parents. It is known that the procedures, especially artificial insemination, have been practised for some time. Yet no birth registration describes the father as "semen donor, unknown" or the mother as "gestational only". Except in adoption, the parents are always those into whose family the child is born. It has not been Registry practice to inquire of any informant whether artificial reproductive technology or donor gametes have been used. Any information concerning that exists in medical records only.

4.99 Only recently were legislative steps taken to clarify the parentage and legal status of children created by these procedures. Presumptions exist in State and federal law, to regularise if not authorise explicitly the registration of social and not biological Parentage.

> The Family Law Act 1975 adopts State law in assigning parentage to a woman and her partner where the partner has agreed to an artificial conception procedure.[91] This presumption applies regardless to whom the child is genetically related.
>
> The Artificial Conception Act 1984 provides that when a child is born to a woman as a result of artificial insemination or in vitro fertilization to which her husband or de facto partner has consented, her partner is presumed for all purposes to be the father of the child,[92] and any semen donor who is not the woman's husband or partner is presumed not to be the father of the child.[93]

4.100 Registration of particulars about a person's birth establishes evidence for the legal proof of identity and parentage. It reflects the person's legal status, but does not confer that status. In the vast majority of cases, the legal status in a birth registration reflects the biological reality of parentage in others, for example an adoption order, it does not. The parentage of a child born as a result of artificial reproductive technology is not determined by registration, but by the statutory presumptions which apply. In a manner similar to an adoption order, their operation alters the child's legal status. The presumed parentage is recorded on the register which then reflects the social rather than the biological reality. Registration therefore establishes the proof of the person's legal identity as determined elsewhere by law. It is unnecessary to recommend any amendment to registration law or practice other than that it should ensure that the particulars of a child's birth are furnished in accordance with the legal presumptions. Birth certificates should contain these details and not any revealing the use of artificial reproductive techniques.

4.101 Registration of social parentage in accordance with the statutory presumptions conceals the biological or gestational parentage and the fact that artificial reproductive technology has been used. This information relates to the circumstances of the child's birth, and the child's actual identity and descent. It should be recorded permanently. Here too, we draw a parallel with the registration of a child who has been adopted. We believe it is important to register the relevant information.

4.102 It is not usual to make this information available to the child who is born as a result of using this technology. Confidentiality has been maintained so far, not as a result of government policy (as with adoption), but because of decisions made by the parents and the medical profession. It is an area in which public opinion may well change, and release of the information may be considered desirable or even essential in the future. Therefore it is important that information should be stored permanently and securely.

4.103 There are three places where the information may be stored: the medical institutions where the procedure is carried out; a government agency concerned with child welfare, or the Registry of Births. We believe there is a strong case for making the Registry of Births the keeper of this information, in the same way as it stores original birth records of adoptees. This is consistent with the recommendation made by the Commission in the Surrogate Motherhood Report.[94]

4.104 Once it is recorded, access to the information would need to be determined as a matter of public policy. The role of the Registry would be to implement the decisions made at law about who should have access and the circumstances in which access should be given.

RECOMMENDATION 13: Registration and Transsexuals

The Commission recommends that:

(i) alteration of the register should be permitted to reflect change of sex following sexual reassignment surgery;

(ii) applications for such alterations to the register should be supported by a statutory declaration citing appropriate medical evidence;

(iii) an application for a change of name to a name more appropriate to a member of the opposite sex should be accepted and the change registered, provided the application is supported by evidence necessary to prove change of name at common law;

(iv) no entry on the register should be expunged following an alteration to sex or name, but certificates issued by the registry should contain only the information requested by the applicant;

(v) these parts of the register should be kept open to the public.

4.105 When a birth is registered, it is the Principal Registrar's duty to record the sex of the child.[95] The criteria for determining a person's sex are not enumerated in the Act or the Registry's practice manuals. Registration is based on information in the furnished particulars, including the child's sex as determined by a medical

practitioner. There are various methods used to establish a person's sex, none of which can be regarded as conclusive in itself, chromosomal factors, gonadal factors, genital factors and psychological factors, to which may be added sex hormones and secondary sex characteristics.[96] These tests satisfy the vast majority for whom the sex assigned at birth is unambiguous and correct. In rare cases, it may be discovered that the sex was wrongly decided at birth, or a medical decision may be made that it is in the child's interests to be raised as a member of the other sex.[97] Alternatively a person may determine later that he or she is transsexual and undergo sexual reassignment surgery, medical procedures which are widely available throughout the world, including Australia. The medical reality is that such surgery is routinely done.

4.106 In the Court of Criminal Appeal recently, Street CJ and Mathews J held for the first time in Australia that a person could be psychologically a female although born a male. In *R v Harris* a person who had undergone full sexual reassignment surgery appealed against conviction of an offence under s81A of the Crimes Act 1900 that "being a male" he had attempted to commit an act of indecency with another male person.[98] In allowing the appeal, the majority of the Court rejected an argument that the physical and medical facts were necessarily conclusive in determining gender. The Court was not prepared to decide that surgery combined with psychological outlook would always be determinative of a person's gender. Mathews J expressly excluded the application of her determination to the law of marriage and decided that Ms Harris' co-defendant, who had not undergone surgery, was correctly described as a male person within the terms of s81A.

4.107 Whether through error or decision to change, the registration of birth may state a sex which is different from the sex the person chooses. The discrepancy becomes an issue because under the law, many rights, benefits and detriments are determined solely on the basis of whether a person is male or female. Underpinning this system is the understanding that a person's sex is self-evident and conclusive in reality and at law. Registration of birth provides evidence in proof of a person's identity, including sexual identity, by which legal status is determined. A discrepancy between the recorded and apparent sex creates difficulties for the person, including those relating to legal status.

4.108 The Registration Act gives the Principal Registrar considerable discretion in the means by which an alteration to the register is made.[99] It is Registry practice to re-register the birth of a child on medical evidence that the sex of the child was recorded incorrectly, or that surgery has altered the child's apparent sex. This practice is not followed for transsexuals. For some time the Principal Registrar has permitted a person producing medical evidence of having undergone sexual reassignment surgery to record a change of name on the birth registration which is gender appropriate, but he will not alter the recorded sex.[100] This means transsexuals must comply with stricter requirements than others to have a name change recorded. It was the practice of the Registry not to issue an extract certificate showing only the new name. The person would be issued only with a full certificate complete with original and amended names and the sex as registered at birth. The rationale for this policy was to prevent a transsexual using m extract as misleading proof of identity for purposes of the Marriage Act 1961 and to participate in a void marriage.

4.109 Since October 1987 Registry practice has altered to permit the issue of an extract certificate with no reference to sex. The change occurred after the Principal Registrar obtained assurances that the Commonwealth Attorney General's Department (which administers the Marriage Act) had no objection. This change has resolved only one of the difficulties created for transsexuals by the registration system. The Registry will still not alter the sex on the register. As yet, there is also no recognition for pre-operative and non-operative transsexuals who may not register even a change of gender-specific name, and there is some dissatisfaction about the registration of death in a transsexual's original name and sex.

4.110 It is argued that legal acceptance of reassignment, including recognition by registration authorities, is necessary to preserve the rights of and prevent discrimination against those who are transsexuals. The solution proposed is for the Principal Registrar, on proof of successful sex reassignment surgery, to amend the birth register, issue a certificate showing the amended details only. and permit access to the original records only with the consent of the person or on a court order. This is tantamount to re-registration of the birth. A similar proposal in our Discussion Paper received some sympathetic support. It was recognised that the Registry's previous policy on the issue of extract certificates was discriminatory and based on concerns best dealt with under the Marriage Act. Understandably, there was opposition to our proposals, both on the grounds that a closed register for transsexuals would itself be discriminatory, and that there should be no recognition of these people as a matter of public policy.

4.111 We accept that transsexuals face significant practical difficulties whenever social practices require production of a birth certificate as a document of identification. Although the solution proposed involves the right to amend the birth register, it is not simply a matter of registration law. As a person's legal status depends on their sex in many instances, the full resolution of the problem must involve changes to the law relating to the determination of a person's sex. This is beyond our terms of reference. This area of the law is in a state of transition, and transsexuals have the right to cancel their original birth registration in several European and North American jurisdictions. This right has not been conferred in Australia or England. Judicial decisions are scarce. So far none recognises that transsexual surgery alters a person's legal sex for all purposes.[101] Nor has legislation provided that right. A draft Sexual Reassignment Act (NSW) prepared in 1986 and designed to secure the legal status of transsexuals has not yet been tabled in Parliament. In view of this, we do not consider that it is appropriate to make recommendations which would alter the substantive law on this matter. However, there are some aspects of the issue which can be addressed within the framework of the principles we have adopted and the recommendations we have made about the registration system generally.

4.112 Our conclusions and recommendations, especially about alteration of the register and access to registered details where the register has been altered are presented above, at paragraphs 4.37 - 4.40. It is our view that correcting errors in the original registration, and recording subsequent changes to registered details is consistent with the purposes of registration. Any alterations should be recorded so that the original recording is retained on the face of the register. There should, however, be flexibility in the form of certificate available to allow a certificate to be issued which omits reference to sex or which shows only the current status of the applicant.

4.113 Application for change of sex to be recorded should only be entertained from those who provide medical evidence of having undergone sexual reassignment surgery. For the reasons given by Mathews J in *R v Harris*, to accept any evidence short of surgery to enable a change would be unacceptable. It could only lead to difficulties of proof and abuse by those who are not true transsexuals. We agree with Mathews J that this could lead to a trivialisation of the difficulties genuinely faced by people with gender identification disharmony".[102]

4.114 A person should be entitled to record *any* change of name, whether or not it is gender appropriate. There is no restriction on change of name at common law. The altered details should be available on a certified copy of the register, endorsed as "current status only" in line with the general policy recommended for the Registry. The full copy of the register should show all information, original and amended. If a decision is to be made to close this part of the register it must be done by way of legislation or regulation, and not as an exercise of the Principal Registrar's discretion. This matter is beyond the Commission's terms of reference and we make no further recommendation.

RECOMMENDATION 14: Registration of Death

The Commission recommends that where possible the particulars necessary for the registration of a death should be obtained from a relative of the deceased person as relative is defined in the Registration Act.

4.115 Although our terms of reference specifically refer to the registration of deaths we have found little evidence of community dissatisfaction with this aspect of the registration system. We have received submissions on the information which should be recorded in relation to deaths and on the inclusion of potentially embarrassing details on the death certificate. Another issue which has been addressed is the integrity of information recorded on the death register. We consider only those issues.

4.116 Compulsory registration of a death serves dual purposes, as does birth registration. For public purposes it is considered necessary to have a statistical record of both the fact of and the cause of each death. It is the only method by which reliable statistical and actuarial data can be collected, identifying information about the deceased is used by various parts of the administration.[103] For private citizens, death registration provides evidence of the event and of the identity of the deceased, as well as genealogical information. Consistent with our approach to the reform of birth registration, our recommendations take all these purposes into account. As well, the principles outlined in paragraph 4.3 are applied, where relevant.

4.117 Registration of a death is governed by the Registration Act and the Coroners Act 1980. The Principal Registrar must register each death where particulars have been furnished or otherwise ascertained or

established.[104] Various documents relating to the cause of death and disposal of the body must be lodged with the Registry, completed by a medical practitioner or coroner, and the funeral director. Particulars about the deceased which are required for registration are lodged in the prescribed Form of information. The duty to furnish particulars falls on:

he occupier of a house or institution where the death occurs there; or

a relative of the deceased where the death occurs elsewhere. A relative means spouse, parent or guardian, or any son, daughter, brother or sister aged 18 years or over, but any person conversant with the facts may do so.[105]

The Act provides for particulars to be furnished to the funeral director or a local registrar.[106] In practice the funeral director completes the prescribed form from information provided by the next-of-kin, another relative, a friend, matron of a hospital or a trustee.

4.118 Concern has been expressed that the current procedures permit people who are not sufficiently familiar with the deceased's personal details to be informants and so compromise the integrity of data entered on the register. A significant proportion of death registrations contain inaccurate information or not known entries as a result.[107] This reduces the evidentiary and genealogical value of the document.

4.119 The remedy which has been proposed is to permit, where possible, only those with the required relationship with the deceased to be sole informants, and more distant relatives and acquaintances to furnish only the information necessary for disposal of the body. This may require that the prescribed form be submitted at a later date by an appropriate informant or that the Registry verify with such a person particulars furnished by another.

4.120 It is clear that current procedures do not always result in the collection of accurate information about the identity and descent of the deceased. If this may be improved by an alteration to the administrative practices of the Registry, then we believe this should occur. Distinguishing between the data necessary to identify the deceased on the register and information relevant to the cause of death and disposal of the body is consistent with the dual purposes of registration. As the proposed procedures add little burden to the Registry's task, and would result in the creation of more valuable records, we recommend that they be adopted.

4.121 The Principal Registrar is required to effect registration by recording the deceased's name, parentage, date, place and cause of death, and such other particulars as he thinks fit.[108] The Registry records the following additional information on the death register:

sex and age;

usual residence and usual (or previous) occupation;

place of birth and, if appropriate, period of residence in Australia;

marital status and details of each marriage; and

names of all children, including ex-nuptial and legally adopted.

4.122 Certain other information is collected for statistical purposes only.[109] A certified copy of the entry contains all recorded data with the exception of the period of residence in Australia, which at one time was included on the death certificate.

4.123 The inclusion in the register of deaths of details which may be embarrassing or potentially discriminatory is specific to the terms of this reference. Amongst this potentially embarrassing information is the exact cause of death or the place of death precisely identified. As well, an accurate account of the person's parentage or descendants may reveal information previously concealed from relatives and others with legitimate access to the register or death certificate. As we have determined with regard to birth registrations, this is more appropriately

considered as a question of access to registered information. Nevertheless, it raises an important issue which must be addressed.

4.124 We would argue that it is not only unreasonable to expect or permit the Principal Registrar to censor sensitive information in these circumstances, but that he has a positive duty not to conceal the truth, and to ensure all data is recorded precisely and fully. Registration of a death creates a document recognised as evidence of the particulars it contains about the person and the event.[110] Its veracity may be of crucial importance in legal proceedings arising from the death, for example concerning criminal acts or administration of the deceased's estate.

4.125 Consistently with our view throughout these recommendations, we do not recommend that any information entered on the death register should be made confidential. Like all certificates issued by the Registry, however, the contents of a death certificate should meet the requirements of the applicant for it. In this way, most of the public embarrassment caused by entries on the register would be avoided.

4.126 The extensive information which the Principal Registrar requires under his discretion clearly provides a more precise identification of the deceased and of any children. This aspect of the information on the death register has been referred to in submissions. The proposals for reform refer to the need to record all details meticulously, and the value for genealogical purposes of recording additional information. This additional information could include the following items:

previous names of the deceased;

last usual domestic residence;

occupation of parents;

full names of each spouse and child;

details of de facto relationships, spouses and children; and

nationality, citizenship, or ethnic background of deceased and his or her parents.

4.127 Death registrations in New South Wales already record quite comprehensive details identifying the deceased and their families. Proposals to increase the amount of information compulsorily recorded do not raise privacy implications to the same degree as birth registrations. The potential for misuse of such data does exist, but is small. Obviously for genealogical purposes recording additional information is desirable. However, we are not persuaded that compulsory recording is necessary. Nor do we regard the additional burden imposed on the Registry to be warranted.

FOOTNOTES

1. The Registrar General responsible for implementation of compulsory civil registration argued:

> "The machinery of this Department ... may be available for many useful and important objects. at present either wholly neglected or entrusted to Departments with whose duties they have no very intimate connection ..." *Registration (Report from Registrar General)* (Sydney, June 1856) at 5.

2. NSW Privacy Committee, Paper No 31.

3. ALRC 22, *Privacy* (AGPS, 1983).

4. Freedom of Information Act 1982 (Vic) and Freedom of Information Act 1982 (Cth). At the time of writing the Freedom of Information Bill 1988 (NSW) was still under discussion.

5. Registration Act. ss12(1), 17(1), 23(1).

6. ss11(l)(b), 16(1)(b). 22(1)(b).

7.s37(1).

8.s38(1).

9. s57(1); see also Crimes Act 1900 ss337, 547A.

10. ss12(1), 17(1).

11. s23(1).

12. ss12(2), 17(2), 23(2).

13. ss18(2), 24(2).

14. s28. The funeral director or other "person responsible".

15. s29(2); Marriage Act s50(4).

16. Registration Act. ss30, 31.

17. Part IV Recording of Legitimations and Parentage Information ss41-42B.

18. For example, a person may have changed his or her name by usage or sex by surgery and may wish to alter the register to reflect the change.

19. ss32, 35.

20. s35(6)(a).

21. ss43 - 48A

22. s44.

23. Births and Deaths Registration Act 1953 (Eng); Registration of Births, Deaths and Marriages (Scotland) Act 1965; Births and Deaths Registration Act 1951 (NZ).

24. Royal Commission of Inquiry Into Drug Trafficking, Interim Report No 2 *Passports* (AGPS, Canberra, 1982) at 30-40.

25. Id at 50; D P Byrne and J D Heydon, *Cross on Evidence*, (Butterworths, Sydney, 3rd Aust ed, 1986) at 1058; Evidence Act 1898 s30(1); Registration Act, s48(4).

26. The Lands Titles Office currently supplies information or sells indexes which are used to access Information held at the Office: *Land Titles Office Annual Report 1988* at 13, and the Department of Motor Transport supplies information for commercial purposes.

27. For example, newspapers and electoral rolls.

28. M Aronson and N Franklin, *Review of Administrative Action* (Law Book Co. Sydney. 1987) at 26-30; De Smith's *Judicial Review of Administrative Action* (J M Evans ed) (Stevens & Sons. London, 4th ed, 1980) at 295.

29. Most of the Registry's practice in the choice and registration of names falls into this category. as does the practice on destroying stillbirth records and the issue of certificates to transsexuals.

30. The records of parentage in IVF births may also be dealt with in this way by statute.

31. s11(3)

32. *Registration*, *Second Annual Report 1858*; *Blackett v Newman* (1858) 2 Legge 1117.

33. Registration Act ss12, 17. 23; Marriage Act 1961 (Cth) s50(4).

34. Australian Bureau of Statistics, submissions to the Commission of 14 May 1986 and 14 July 1988.

35. ss43-48A: see above paras 3.22-3.23.

36. Division 6 ss32-36, s32(1).

37. *Manual of Practice for the Guidance of Local Registrars of Births and Deaths, New South Wales*, Ch X 38. s35(5),(6).

39. ss31, 41.

40. For example, it is used to record a change of sex for an entry in relation to a child.

41. Those without legal capacity include children and the mentally incapable. The next of kin should be the person informed when a death certificate is to be amended.

42. s12(1) but any other person conversant with the facts may furnish particulars: s12(2).

43.s4(1).

44. (1985) EOC 92-142 *Equal Opportunity Law and Practice* (Aust & NZ) CCH.

45. As occurs now in 75% of registrations: Australian Bureau of Statistics *Births New South Wales 1987* (Sydney. 1987) Table 18 at 18. In 1976 ex-nuptial-paternity was acknowledged in only 56% of registrations.

46.s14(1).

47. ss 11- 13.

48. Family Law Act 1975, s66Q. Children (Equality of Status) Act 1976, s10(3).

49. Registration Act, s42A(S)(c).

50. Principle 3 states that "the child shall be entitled from his birth to a name...".

51. Discussed paras 2.6 - 2.12; and see paras 4.68, and notes 57-59.

52. Provision is made to add a name later. Registration Act s34(1). Although there is provision for the Principal Registrar on the application of the parents or guardian to insert a name if a person has been registered with only a surname, only rarely will a child be registered as -unnamed- with a surname.

53.s12(1).

54.s11(3).

55. (1985) EOC 92 - 142.

56. See Registration Division Circular 1 April 1986.

57. *Re s22 of the Registration of Births, Deaths and Marriages Act* [1973] Qld R 441.

58. Prescribed forms used at the Registry since 1856.

59.s34(1).

60. s34(WA).

61. s34(1)(b).

62. See *Manual of Practice for the Guidance of Local Registrars of Births and Deaths*, Ch III-9.

63. The criteria are outlined in the *Manual of Practice for the Guidance of Local Registrars of Births and Deaths*, Ch III-9 and include the principles stated in *George v Radford* (1976) FLC 90-060.

64. s34(1)(b)(ii).

65. See discussion at para 2.13, and *Du Bourlay v Du Bourlay* [1869] LR 2 PC 430. *Earl Cowley v Countess Cowley* [1901] AC 450.

66. For example, Registration of Births, Deaths and Marriages Ordinance 1963 (ACT s22(1), Registration of Births, Deaths and Marriages Act 1980 (Nn s21(3).

67. Delivery is the complete expulsion or extraction of a child from the mother: Registration Act s4(1).

68. In accordance with Division 2. ss16-21.

69. s17(1), (2).

70.s18.

71.s16(2).

72. s21.

73. Stillbirth and Neonatal Death Support Group (SANDS). submission to the Commission. 25 May 1988; oral submissions from medical practitioners and social workers; debate on Registration of Births, Deaths and Marriages (Amendment) Bill (Vic) in *Victorian Parliamentary Debates (Hansard)*, 16 October 1985 at 865-888.

74. Registration of Births. Deaths and Marriages Act 1959 (Vic) s27A. Inserted 1986 by Registration of Births. Deaths and Marriages (Amendment) Act 1985: Registration of Births, Deaths and Marriages Act 1980 (NT).

75. Registration of Births, Deaths and Marriages Amendment Bill 1988 (Qld).

76. Registration of Birth. Deaths and Marriages (Amendment) Act 1934 s3, inserting s19A into the 1899 Registration Act.

77. Registration Act 1899 s19A.

78. Registration of Births. Deaths and Marriages (Amendment) Act 1967 s2(1)(g), repealing s19A and inserting Division 2 ss30B-30F into the 1899 Registration Act.

79. Submission from SANDS.

80.s4(1).

81. Professor R Shearman, letter to the Commission, 30 January 1987.

82. See Crimes Act NSW s20, Definition of Child Murder; *R v Hutty* [1953] VLR 338 at 339 per Barry J; Williams, Glanville *Textbook of Criminal Law* (Stevens, London, 2nd ed, 1983) at 289-90.

83. Maternal and Perinatal Sub-committee, New South Wales Department of Health, advice to the Commission, August 1988.

84. Adoption of Children Act, s61.

85. ss30,31(1)(a), or on a memorandum relating to that person previously registered, s31(1)(b).

86. s46(1).

87. The Adopted Persons' Contract Register administered by the Department of Family and Community Services can match adoptees and their natural parents but only if both parties independently register their names and addresses.

88. Western Australia, Victoria.

89. Scotland, England, Finland, Israel.

90. s11(3).

91. Family Law Act 1975 (Cth) s60B(1),(4).

92. Artificial Conception Act 1984 ss3, 5.

93. Id s6.

94. The Commission there recommended that an accurate record of the circumstances of the child's conception and birth should be kept on the register of births and that this should be available to the child on attaining the age of 18: Recommendation 11, New South Wales Law Reform Commission, *Surrogate Motherhood Report* (LRC 60, New South Wales Government Printer, 1988) at 66.

95. s11(3).

96. See *Corbett v Corbett* [1971] P 84 and Family Law Council, *Birth Certificate Revision of the Sexually Reassigned* (Working Paper No 1, July 1978).

97. See "Mother says Kylie is a girl, but the law says she's a boy", *Sydney Morning Herald* 9 September 1983 (report of South Australian child).

98. Unreported (Court of Criminal Appeal,NSW, 31 October 1988, Street CJ, Carruthers and Methews JJ). 99. s35.

100. See *Manual of Practice for the Guidance of Local Registrars of Births and Deaths*, Ch X-3.

101. Even in *R v Harris* (see para 4.106 above) the Court of Criminal Appeal was not prepared to recognise a change of sex for the purpose beyond those which confronted the Court. *Corbett v Corbett* [1971] P 84; *R v Tan and Others* [1983] QB 1053 (CA); Rees v United Kingdom (1987) 9 EHRR 56 (European Court of Human Rights)/

102. R v Harris note 98, judgment of Matthews J at 43.

103. Above para 3.21-3.23.

104. s22(1).

105. s23(1), (2), (5).

106. s23(1).

107. Mr M R Sainty, submission to the Commission. 12 May 1988.

108. s22(3).

109. Municipality or shire of usual residence, whether the deceased was a pensioner or Australian aborigine.

110. Evidence Act 1898. s30(l): Registration Act s48(4).

Appendix A: Preliminary Consultation

Responses were received from:
Aboriginal Legal Service Ltd

Adoption Triangle New South Wales

Anti-Discrimination Board, NSW

Australian Institute of Multicultural Affairs

Catholic Commission for Justice and Peace

Associate Professor R Chisholm

Commonwealth Department of Health, Australia Card Secretariat

Department of Aboriginal Affairs, Cth

Equal Opportunity Tribunal

Ethnic Affairs Commission of New South Wales

Family Law Council

Fellowship of First Fleeters

Funeral Directors' Association of Australia

Human Rights Commission

The Kenya - Australia Society

Ministry of Aboriginal Affairs, NSW

National Spiritual Assembly of the Baha'is of Australia

New South Wales Jewish Board of Deputies

The Ombudsman, NSW

Privacy Committee, NSW

Royal Australian Historical Society

Society of Australian Genealogists

Women's Co-ordination Unit, NSW

Women's Electoral Lobby

Appendix B: Government Agencies Supplying Information About Use of Registry Data

Australian Bureau of Statistics

Australian Electoral Commission

Central Cancer Registry, Department of Health, NSW

Commonwealth Department of Health

Commonwealth Department of Veterans' Affairs

Department of Health, NSW

Department of Social Security. Cth

State Electoral Office

Appendix C: Submissions And Acknowledgments

Written submissions were received from:

Aboriginal Legal Service Ltd

Adoption Triangle New South Wales

Ms D L Alan

Anti-Discrimination Board, NSW

Australian Bureau of Statistics

Australian Electoral Commission

Bioethics Unit, Department of Community Services and Health, Cth

Ms P Bolton

Ms L Carpenter

Central Cancer Registry, NSW Cancer Council

Commonwealth Department of Veterans' Affairs

Miss J V Coombs

Department of Community Services and Health. Cth

Department of Health, NSW

Department of Social Security, Cth

Department of Youth and Community Services, NSW

Diocesan Registrar, Anglican Church Diocese of Sydney

Ethnic Affairs Commission of New South Wales

Family Law Council

Mr P H Greenwood

Mr A Hammoud

Health Professionals Registration Boards, Department of Health, NSW

Ms J C King

Land Titles Office. NSW

Law Society of New South Wales

Muslim Women Association

New South Wales Committee on Adoption Inc

Mr A Newman

Obstetric Social Workers. Royal Hospital for Women

Ms G L Perkins

Privacy Committee, NSW

Right to Life Association (NSW) Inc

Royal Norwegian Consulate General

Ms C Sanderson

SANDS (NSW) Stillbirth and Neonatal Death Support

Mr M R Sainty

Society of Australian Genealogists

St George Migrant Resource Centre Ltd

Tiresias House Inc

Ms L Wagland

Mr R Webb

Women's Co-ordination Unit. NSW

Mr M J Woodbridge

The author of one submission wished to remain anonymous.

In addition to written submissions, the Commission was assisted greatly by

the advice and oral submissions from a number of persons and organisations:

Adoption Branch, Department of Family and Community Services

Archives Office of New South Wales

Archivist, Anglican Church Diocese of Sydney

Australian Bureau of Statistics

Ms U Baileys, Department of Health NSW

British Consulate-General

Associate Professor R Chisholm

Department of Foreign Affairs

Federal Republic of Germany Consulate-General

New Zealand Consulate-General

Mr P Orlovich

Principal Registrar and staff, Registry of Births Deaths and Marriages, NSW

Registry of Births, Deaths and Marriages, ACT

Professor R Shearman

Ms P Slaytor

Society of Australian Genealogists

Swiss Consulate-General

Ms J Talty

Ms A Tan